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National Energy Board

Reasons for Decision

Maritimes & Northeast Pipeline Management Ltd.

MH-3-98



October 1998

Detailed Route Hearings

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National Energy Board | Office national de l'énergie

File: 3200-M124-1-2
26 January 1999

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Dear Sir/Madam,

Subject: **Maritimes & Northeast Management Ltd. ("M&NP")**
Detailed Route Hearing in the Case of William (Billy) MacDonald

The following constitutes the Board's final Reasons for Decision in the MH-3-98 Detailed Route Hearing regarding the objection of Mr. MacDonald, on behalf of the Red Tail Nature Awareness Camp ("RTNAC"), to M&NP's proposed route. For completeness, this decision should be read together with section 3.3.8 of the October 1998 Reasons for Decision.

In the October 1998 Reasons for Decision, the Board reserved its decision in the case of Mr. MacDonald, pending the filing and examination of further information with respect to the alternate route proposed by Mr. MacDonald. The Board directed M&NP to conduct a detailed evaluation of its proposed route and any other viable alternate route, taking into consideration its routing criteria and Mr. MacDonald's current use of his property and adjacent lands within the pipeline corridor.

M&NP subsequently filed additional information concerning its detailed evaluation of the two routes and Mr. MacDonald filed evidence in reply. The Board reconvened its hearing on 7 and 8 January 1999 to examine this additional evidence. The hearing was conducted on those dates by video-conference between Calgary, Alberta and Stellarton, Nova Scotia. The views of the parties and of the Board are set out below.

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Views of the Parties

1. Environmental Matters

a) Wetlands

M&NP stated that, as a result of further evaluation, it had identified a previously undisclosed small riparian wetland on the proposed route adjacent to MacKay Brook. M&NP stated that no wetlands occur on the alternate route.

M&NP stated that the riparian wetland is dominated by cattails, sedges and grasses. No wetland values and functions were identified that would be sensitive to short term (construction) disturbance. However, due to the time of year, M&NP could not conduct surveys to determine the presence of rare species. M&NP did state that, based on habitat characteristics, the wetland would provide general habitat for wood turtles, listed as vulnerable by COSEWIC[1], but did not provide critical nesting or overwintering habitat. M&NP was of the view that, although the wetland is a Class 1 routing constraint, adverse effects could be mitigated.

Counsel for Mr. MacDonald argued that, in the absence of appropriate field surveys, the wetland should be avoided.

b) Watercourses

The proposed route would cross the main channel and three tributaries of MacKay Brook, as well as three minor watercourses not identified on 1:10,000 mapping. M&NP stated that all watercourses could be constructed using a dry-crossing method during the 1 June to 30 September fisheries window. The proposed route would require two more watercourse crossings than the alternate route.

The alternate route would cross the main channel and one tributary of MacKay Brook, as well as two minor watercourses. The tributary and minor watercourses could be crossed using a dry crossing technique. The main channel, in the location crossed by the alternate route, would be a "probable wet crossing", but a dry-crossing method would be used if flows permitted. Both parties agreed that the watercourses in the area react quickly to precipitation events and tend to peak and recede within a matter of days. Mr. MacDonald's consultant (Mr. S.A. Ramsay) submitted that proper scheduling and implementation of wet weather shut down policy would minimize the likelihood of a wet crossing.

---

[1] Committee on the Status of Endangered Wildlife in Canada

c) Significant Wildlife Habitat

M&NP identified a significant wildlife habitat in the general local area through which both routes would pass. However the alternate route through this area would be 264 metres longer than the proposed route. M&NP stated that the information on significant wildlife habitat was obtained from the province which indicated that there was a potential for wintering of deer and moose.

Mr. MacDonald stated that the stream valleys located along the proposed route represented valuable shelter and feeding areas for wildlife.

2. Engineering Matters

a) Constructability

M&NP contended that construction of the alternate route would increase disturbance and the potential for impact due to the increased time required for construction and the increased length of the route.

The primary engineering concern of the company was that the alternate route would be more difficult to construct due to steeper banks at stream crossings, and the presence of more bedrock. Both of these features would result in more blasting and rock removal from blasting along the alternate than would be required along the proposed route. M&NP estimated that an additional 8,000 cubic metres of rock would have to be removed if the alternate route were to be constructed. M&NP stated that the alternate route could be constructed.

b) Cost

M&NP estimated that the increase in cost to construct the alternate route would be approximately $431,400. There would also be an increase in crew-days of eight to ten days. M&NP estimated that the increased cost would be reduced by $73,000 if, at the time of construction, a dry-crossing of the MacKay Brook was possible.

3. Land Matters

a) Agricultural Land/Residences

The proposed route crosses a total of 520 metres of agricultural land, consisting of pasture, improved hay fields, and an abandoned orchard. The alternate route parallels the boundary of agricultural land, consisting of hay and corn fields, for 200 metres.

Mr. MacDonald argued that the alternate route would have less impact on agricultural lands and would be further from residences in the area.

b) Land With Recreational Value

The proposed route crosses trails used by the RTNAC in three locations. Upon further evaluation M&NP acknowledged that these trails are located on land with recreational value, a Class 2 constraint, and that the alternate route avoids this area.

M&NP argued that the entire corridor has recreational value as it supports uses such as hunting and fishing, and noted that there is a swimming hole located between the two routes.

M&NP also argued that the mitigation measures proposed would effectively mitigate adverse effects on the operation of the camp, while Mr. MacDonald argued that the proposed mitigation would be ineffective due to the unique nature of the activities carried out by the RTNAC.

c) Temporary Work Space

M&NP stated that additional workroom would be required at the two watercourse crossings on the alternate route because of the larger quantities of grade material and blast rock that would have to be removed.

M&NP acknowledged that since the alternate route contained more cut-over areas and more managed woodland, there could be less of a requirement for space for timber storage than on the proposed route.

d) Landowner Preference

M&NP submitted evidence demonstrating that of the five other affected landowners in the area, two preferred the alternate route and three expressed no preference.

Views of the Board

It is clear that the construction and operation of either route could be carried out in an acceptable manner from environmental, lands and engineering perspectives. In either case, mitigative measures would be required to meet the standards imposed by the Board through its granting of the initial certificate and subsequent approval of M&NP's Environmental Protection Plan. Thus, the Board must examine the substantive differences between the two routes and balance the interests of all affected parties.

The Board notes the evidence submitted in support of the MacDonald objection by Mr. Ramsay through S.A. Ramsay and Associates and, in particular, his conclusion that the proposed route "is more than twice as sensitive to pipeline impacts". The evidence of Mr. Ramsay at the initial phase of the hearing and in his report of December 29, 1998 as clarified through questioning, contained a number of inconsistencies. In certain areas, his evidence failed to provide a full and balanced analysis. The numeric analysis which attempted to produce a "Weighted Ranking of Sensitivities of the Alternate Route" was used without justification of its scientific validity.

Based on all of the evidence presented during the course of these proceedings, the Board is of the view that the conclusions of Mr. Ramsay are, to a large degree, over stated and lacking in professional objectivity. Accordingly, the Board has given very little weight to the evidence of Mr. Ramsay.

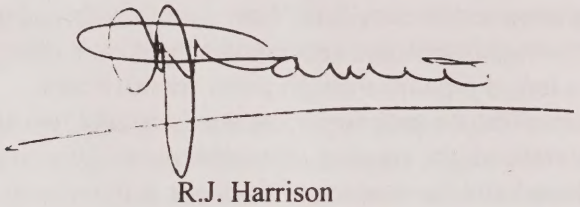
M&NP asserted, in its evidence, that the added length of the alternate route "adds environmental disturbance and increases land use impacts". The Board is of the view that environmental effects and land use impacts must be considered both qualitatively and quantitatively. For example, a shorter pipeline through a sensitive area could have greater effects and thus require more mitigation than a longer pipeline through a less sensitive area.
The evidence shows that the proposed route would require two additional watercourse crossings, the crossing of a wetland, the crossing of an additional 320 metres of agricultural land (compared to the alternate route) and the crossing of the lands with recreational value used by Mr. MacDonald's camp. In contrast, the alternate route would involve additional length and cost, and a potential wet crossing of the MacKay Brook. As avoidance is considered the primary and most effective mitigation measure available, the Board recognizes that construction across the additional features along the proposed route would cause adverse effects requiring significantly more mitigation than would be required along the alternate route.

Finally, it is noted that the proposed route would result in significant impacts on the operation of the RTNAC which could not, in the Board's view, be fully mitigated. Mr. MacDonald has established a valid, unique and substantial recreational use of the lands in the vicinity of the proposed route. It is clear that the operations of the camp would be changed by the construction and continued existence of the pipeline along the proposed route. The Board was not, however, convinced that the proposed route would result in the demise of the RTNAC as was argued by Mr. MacDonald and others. Mr. MacDonald has accommodated previous changes to the land used by his camp resulting from, for example, clearcut logging operations. On the other hand, there is no doubt that the pipeline right-of-way, as a fixed unchanging addition to the landscape, would have a significant and lasting negative impact on the operation of the camp requiring far more accommodation on the part of Mr. MacDonald than previous disturbances in the area.

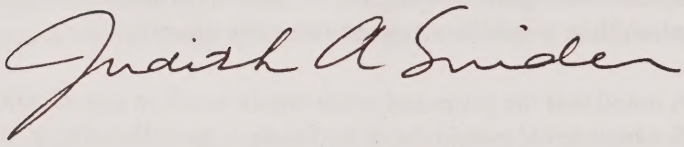
The Board recognizes that the incremental cost of the alternate route is significant. However, in the unique circumstances of this case, the Board is satisfied, on balance, that the alternate route is the best possible detailed route.

Decision

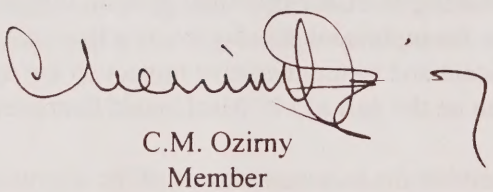
The Board finds that the alternate route proposed by Mr. MacDonald is the best possible detailed route and therefore denies approval of the route applied for by M&NP.



R.J. Harrison
Presiding Member



J.A. Snider
Member



C.M. Ozirny
Member

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National Energy Board

Reasons for Decision

In the Matter of

Maritimes & Northeast Pipeline Management Ltd.

Application dated 24 February 1998 for approval of the Plan, Profile and Book of Reference respecting the detailed pipeline route from Goldboro, N.S. to St. Stephen, N.B.

MH-3-98

October 1998

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Table of Contents

List of Tables ii

List of Figures ii

Abbreviations iii

Recital and Appearances iv

1. Background 1

1.1 Regulatory Process for the Sable Gas Projects 1
1.2 Description of M&NP's Mainline Facilities 1
1.3 Second Stage of Approval Process - Determination of the Detailed Route 2
1.4 Detailed Route Hearing Issues 2
1.5 Scope of Board's Mandate to Consider Alternative Routes 3

2. The Application: Detailed Route 4

2.1 Pipeline Corridor and Route Selection 4
2.2 Detailed Route Selection 4
2.3 Detailed RoW Selection Criteria: Primary and Secondary Principles 4
2.4 Constraint Classes 5
2.5 Other RoW Selection Considerations 6
2.6 Detailed Route Selection Process 6

3. Landowner Objections 7

3.1 Landowner Objections 7
3.2 Board Comments on Generic Issues Raised by Landowners 7
3.3 Specific Landowner Cases 9
3.3.1 H. Franklin Irving 9
3.3.2 Philip F. Christie 13
3.3.3 Percy Khoury 15
3.3.4 Daniel/Claudia Donnelly and Charles/Jeannitta Maillet 18
3.3.5 Robert D. Hannington 23
3.3.6 Alvin J. Bourque 25
3.3.7 Gail and William D. MacKenzie 29
3.3.8 William (Billy) MacDonald 32
3.3.9 Kimberley D./Roderick K. Stanley and Sue M. Brander 37
3.3.10 Glenn H. McNutt 41
3.3.11 Adrian Piek 44
3.3.12 Shelagh Lynch 50
3.3.13 Lorne Wood 55

4. Mineral Rights Objections 58

4.1 Objections by Holders of Mineral Exploration Licences 58
4.2 General Board Comments with respect to Holders of Mineral Exploration Licences 58
4.3 Specific Mineral Rights Cases 59
4.3.1 Orex Exploration Inc. 59
4.3.2 Heartland Resources Inc. 62

5. Disposition 67

List of Tables

2.4 Constraints by Class 5

List of Figures

3.3.1 H. Franklin Irving 10
3.3.2 P. Christie 14
3.3.3 P. Khoury 16
3.3.4 D. & C. Donnelly and C. & J. Maillett 19
3.3.5 R.D. Hannington 24
3.3.6 A.J. Bourque 26
3.3.7 G. & W. MacKenzie 30
3.3.8 W. MacDonald 33
3.3.9 S. Brander and R. & K. Stanley 38
3.3.10 G. McNutt 42
3.3.11 A. Piek 45
3.3.12 S. Lynch 51
3.3.13 L. Wood 56
4.3.1 Orex Exploration Inc. 60
4.3.2 Heartland Resources Inc. 63

Abbreviations

Act	National Energy Board Act
Board or NEB	National Energy Board
DOP	Directions on Procedure
EIS	Environmental Impact Statement
EPP	Environmental Protection Plan
km	kilometre
KP	Kilometre Post
Licences	Mineral Exploration Licences
M&NP or the Company	Maritimes & Northeast Pipeline Management Ltd.
NB	Province of New Brunswick
NGLs	Natural Gas Liquids
NS or the Province	Province of Nova Scotia
PID	Property Identification
PPBoR	Plan, Profile and Book of Reference
Regulations	National Energy Board Pipeline Crossing Regulations, Part I and Part II
RTNAC	Red Tail Nature Awareness Camp
RoW	Right-of-Way
SOEP	Sable Offshore Energy Project
VEC	Valued Ecosystem Component

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the Regulations made thereunder; and

IN THE MATTER OF an application by Maritimes & Northeast Pipeline Management Ltd. dated 24 February 1998 for approval of the Plan, Profile and Book of Reference respecting the detailed route of a natural gas transportation pipeline from Goldboro, Nova Scotia to St. Stephen, New Brunswick pursuant to section 33 of the Act; and

IN THE MATTER OF the National Energy Board Hearing Order MH-3-98.

HEARD in Fredericton, New Brunswick on 23 and 24 of July 1998; in Moncton, New Brunswick on 28, 29 and 30 July 1998; in Stellarton, Nova Scotia on 4, 5, 6 and 7 August 1998; and in Halifax, Nova Scotia on 10 and 11 August 1998.

BEFORE:

R. J. Harrison	Presiding Member
J.A. Snider	Member
C.M. Ozirny	Member

APPEARANCES:

IN FREDERICTON, MONCTON & STELLARTON

S.M. Munro G.M. Vlavianos	Maritimes & Northeast Pipeline Management Ltd.
P. Enderwick	Board Counsel

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R. Creamer	for H. Franklin Irving
P. Christie	Intervenor in the Case of H. Franklin Irving
B. Roderick	for Percy Khoury
P. Christie	On His Own Behalf

IN MONCTON;

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R.B. Johnson	for Charles and Jeannitta Maillet
R.D. Hannington	On His Own Behalf

IN STELLARTON;

A. Leger	for Alvin Bourque
G. Mackenzie W. MacKenzie	On Their Own Behalf
B. Romanowsky D. Orton E. Huner	for William MacDonald Intervenor in the Case of W. MacDonald Intervenor in the Case of W. MacDonald
B. Romanowsky S. Brander	for Kimberley Stanley and Roderick Stanley On Her Own Behalf
G. McNutt	On His Own Behalf
A. Piek E. Albertini	On His Own Behalf Intervenor in the Case of Adrian Piek
B. Romanowsky C. Hughes J. Morrigan	for Shelagh Lynch Intervenor in the Case of S. Lynch Intervenor in the Case of S. Lynch
A. MacNeil	for Lorne Wood

IN HALIFAX;

L.E. Smith S.M. Munro E. Bourgeault	Maritimes & Northeast Pipeline Management Ltd.
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D.A. Caldwell, Q.C. L.I. Berliner P. Morris	for Heartland Resources Inc.
P. Enderwick	Board Counsel

Chapter 1

Background

1.1 Regulatory Process for the Sable Gas Projects

Mobil Oil Canada Properties and Shell Canada Limited, on behalf of the five proponents of the Sable Offshore Energy Project ("SOEP") and Maritimes & Northeast Pipeline Management Ltd. ("M&NP" or the "Company") commenced the regulatory approval process for the "Sable Gas Projects" in 1995. The Sable Gas Projects consist of several undertakings to drill, produce, transport and process natural gas discovered on the Scotian Shelf near Sable Island.

In June 1996, SOEP applied to the National Energy Board ("NEB" or the "Board") for a Certificate of Public Convenience and Necessity to construct certain offshore and onshore pipelines, and related facilities, to transport gas produced in the offshore area near Sable Island. Gas and associated natural gas liquids ("NGLs") would be collected from offshore drilling platforms and brought onshore by means of a submarine pipeline to a gas plant located near Goldboro, Nova Scotia. NGLs would be transported from the gas plant by an onshore pipeline to Point Tupper, Nova Scotia for further processing and shipping.

In October 1996, M&NP applied under section 52 of the *National Energy Board Act* (the "Act") for a Certificate of Public Convenience and Necessity to construct and operate an onshore pipeline. M&NP's proposed pipeline would ship natural gas developed by SOEP from the SOEP gas plant near Goldboro to markets in the Maritimes and the northeastern United States. M&NP anticipated the building of lateral pipelines (e.g. to Halifax, NS and to Saint John, NB) to develop gas markets in the Maritimes.

A five person Joint Public Review Panel was established to conduct a review of the Sable Gas Projects. Both SOEP's and M&NP's applications were considered at the GH-6-96 public hearing during the spring and summer of 1997 and the Joint Public Review Panel Report was issued by the Panel in October 1997. In its report, the Panel concluded that the SOEP and the M&NP pipelines were not likely to cause significant adverse environmental effects.

On 17 December 1997, pursuant to Certificates GC-94 and GC-95, the Board approved the construction and operation of the SOEP and M&NP facilities, respectively.

1.2 Description of M&NP's Mainline Facilities

The M&NP pipeline facilities approved by the Board would transport natural gas to Canadian and U.S. markets. The mainline facilities would consist of approximately 558 kilometres ("km") of 762 millimetre pipeline. The route of the pipeline, to be located within a one km wide corridor approved by the Board in its GC-95 Certificate, would extend from the Goldboro gas plant in a northwesterly direction passing near New Glasgow and Tatamagouche, Nova Scotia, crossing the Nova Scotia-New Brunswick border near Tidnish. Approximately 234 km of the pipeline would be located in Nova Scotia. The pipeline would traverse New Brunswick in a westerly direction passing near Moncton and Chipman. From Chipman, it would proceed in a southwesterly direction passing near Fredericton,

crossing the Saint John River and proceeding to the international border near St. Stephen, New Brunswick. Approximately 324 km of the pipeline would be located in New Brunswick. At the international border, the M&NP pipeline would connect with facilities that would deliver gas to the northeastern United States.

1.3 Second Stage of Approval Process - Determination of the Detailed Route

Certificate GC-95 granted M&NP the approval to construct and operate a pipeline within a specified one km wide corridor. Under the provisions of the Act, however, the detailed route is determined during a second stage of approval.

The approval process prescribed by the Act for considering the detailed route is designed to involve all affected landowners and other affected parties. This process begins when the Company files its plan, profile and book of reference ("PPBoR") for the detailed route. The PPBoR identifies the precise location of the pipeline including the lands to be crossed, the types and amounts of land rights required, and the affected landowners and tenants.

Once the PPBoR has been filed, paragraph 34(1)(a) of the Act requires the Company to serve a notice on all landowners from whom land or land rights are proposed to be acquired. This notice describes the proposed detailed route of the pipeline and the procedure to be followed in making objections to the Board. Pursuant to paragraph 34(1)(b) of the Act, the Company must also arrange to publish a notice in at least one issue of a local newspaper. The public notice must include the same information as the paragraph 34(1)(a) notice. Landowners opposing the proposed detailed route have 30 days after receiving the notice to file a written statement with the Secretary of the Board and the Company explaining their interest and their reasons for opposition. Other affected parties have 30 days after the last publication of the public notice to file an objection with the Board.

If no objections to the detailed route are received, the Board may approve the PPBoR without a public hearing. However, if an objection to the route is received, the Board must hold a public hearing in the area where the relevant lands are located. After reviewing all of the evidence, the Board determines the best possible detailed route. A copy of the Board's decision is required to be sent to the Minister of Natural Resources and to each person who made representations at the hearing.

1.4 Detailed Route Hearing Issues

The issues considered in a detailed route hearing are limited, pursuant to subsection 36(1) of the Act, to:

a) the best possible detailed route of the pipeline; and
b) the most appropriate methods and timing of constructing the pipeline.

Issues already addressed in the context of the certificate hearing, such as the need for the pipeline and its general route, were not reconsidered during the course of the detailed route hearings. Further, compensation issues were not considered since, as indicated in the Board's MH-3-98 Directions on Procedure ("DOP"), the Board has no authority to consider compensation matters for landowners. The

Federal Minister of Natural Resources has the responsibility to determine disputes regarding compensation through negotiation and/or arbitration proceedings.

1.5 Scope of Board's Mandate to Consider Alternative Routes

During the course of the MH-3-98 proceedings, some objecting parties put forward, for consideration by the Board, a proposed alternative route. In certain of those cases, the alternative proposals were for routes which fell outside the corridor considered by the Joint Public Review Panel and in respect of which Certificates GC-94 and GC-95 were issued by the Board. The question arose as to whether the Board could determine that such an alternative, outside the approved corridor, would be the best possible route for the pipeline. At the time that this question first arose, in the context of the objection of Ms. Shelagh Lynch, the Board made the following ruling:

> "In the Panel's view, in the context of considering a specific Landowner objection to the Detailed Route as filed by the Company, we have no jurisdiction to approve any route outside of the already approved corridor in the absence of an application by the project proponent. Ms. Romanowsky [counsel for Shelagh Lynch], in light of that, if you still wish to proceed with calling of evidence on the alternate that has been identified, we will hear that evidence, but for the sole purpose of assisting us in determining whether the proposed route, as applied for by the Company, should be approved."

Chapter 2

The Application: Detailed Route

2.1 Pipeline Corridor and Route Selection

The process utilized by M&NP in its corridor determination and selection involved:

a) delineation of a study area based on broad criteria;
b) identification of general pipeline corridors through constraint mapping at a 1:250,000 scale;
c) identification of potential alternative pipeline corridors (one km wide) within the general corridors through constraint mapping at a 1:50,000 scale;
d) selection of the preliminary preferred one km wide pipeline corridor;
e) adjustments to the boundary of the preliminary one km wide pipeline corridor;
f) application for NEB approval of a one km wide preferred corridor; and
g) adjustments to the boundary of the approved one km wide pipeline corridor.

The applied-for one km wide pipeline corridor was approved in December 1997. In its report on the Sable Gas Projects, the Joint Public Review Panel expressed its view that M&NP's route selection process was thorough and involved considerable public participation. At that time, M&NP indicated that it was in the process of delineating a 25 metre easement for its pipeline within the preferred corridor and obtaining options from landowners for these areas.

2.2 Detailed Route Selection

Working within the approved one km wide corridor, M&NP defined a 25 metre wide right-of-way ("RoW"), or easement, within which the pipeline would be constructed. A structured set of guiding principles was utilized to delineate this RoW. Many of the routing criteria used by M&NP in the selection of the one km wide corridor were used to select the 25 metre RoW (i.e. the detailed route).

2.3 Detailed RoW Selection Criteria: Primary and Secondary Principles

The primary principle utilized by M&NP to determine the alignment of the pipeline RoW was to minimize the overall length of the pipeline. This principle was based on several considerations: overall potential environmental impact should be minimized; construction costs would be lower; and fewer properties would likely be affected.

The following four secondary principles were also utilized by M&NP in the delineation of the RoW:

a) adhere to the guidelines associated with three classes of constraints;
b) minimize the extent of wet areas traversed;
c) minimize the number of properties intersected by the RoW where practical; and
d) minimize the number of deviations (i.e. bends or curves) in the RoW.

The primary principle was, where possible, given priority over secondary principles. However, in circumstances where more than one principle was applicable, M&NP balanced the various competing interests to make its determination of the best possible route in each circumstance.

2.4 Constraint Classes

The three different constraint classes utilized by M&NP are described in the following table.

Table 2.4
Constraints by Class

Class 1 (Constraints for which mitigation may not be possible)	Class 2 (Constraint for which mitigation is possible)	Class 3 (Constraints which may require special construction practices)
Blueberry Fields	Agricultural Land (crops to be field investigated)	Bedrock (outcrop)
Eagle Nest	Agricultural Land (tiled area)	Bedrock (shallow)
Ecological Site and Reserve	Atlantic Salmon Angling River	Bedrock (shallow, potentially non-ripable)
Environmentally Sensitive Area (ESA)	Christmas Tree Plantation	Bedrock (potentially acid generating)
Fish Hatchery	Deer Wintering Areas	Mineral Claims
Historical/Archaelogical Site	Ducks Unlimited Site	Petroleum Claims
Landfill Site	Land with Recreational Value	Topography (slopes greater than 20 degrees)
Mine/Quarry/Pit	Old Growth Forest	Waterbody
Mining Area	Permanent Sample Plot	
Sugar Bush	Plantation	
Rare Amphibians	Areas with Elevated Potential for Rare Plants	
Wetland	Recreational Area	
Area with Sinkholes	Significant Wildlife Habitat	
Approximate Area of Limestone, Gypsum, Evaporites	Tree Nursery	
Airport Runway	U-Fish Pond	
Cemetery	Water Supply Area	
Church	Housing (closer than 40 metres)	
Military Base	Reserve/Park	
Municipality/Built-Up Area	Stream Crossing	
Reservoir		
School		

2.5 Other RoW Selection Considerations

In addition to the principles and constraints discussed above, M&NP also considered the following factors during the RoW selection process:

a) avoiding impact on buildings, residences, land use and developed areas;
b) paralleling existing utility or transportation corridors;
c) ensuring side slopes or steep slopes in addition to those identified as Class 3 constraints were avoided where practical;
d) avoiding transecting corners of properties;
e) avoiding bedrock outcrops;
f) ensuring the location for crossing other utility corridors does not impact the other utility or the pipeline;
g) ensuring the availability of access to the RoW;
h) ensuring a 70-90 degree crossing angle at roads;
i) ensuring as close to 90 degree angle at railways, major highways, and watercourses where practical; and
j) ensuring required temporary working room is available at road crossings, railway crossings, watercourse crossings, and for grade cuts.

2.6 Detailed Route Selection Process

M&NP's detailed route selection process incorporated the concept of establishing fixed "control points" within the one km wide approved pipeline corridor. Control points were selected in accordance with the guiding principles set out previously, focussing on environmental and construction concerns. Most control points were fixed at watercourse crossings, road crossings and railway crossings.

As consecutive control points were chosen, a direct RoW route between control points was selected wherever possible in order to give effect to the primary principle of minimizing the overall length of the pipeline. Once the alignment was determined, it was forwarded to a field team to "ground truth" the detailed route. The field team reviewed the RoW, taking into consideration the detailed route selection criteria identified earlier. The balancing of competing criteria was addressed at this stage. Once finalized, the preliminary RoW was reviewed by M&NP management to ensure the alignment was acceptable in view of the applicable environmental constraints.

RoW agents for M&NP then contacted affected landowners to present the preliminary preferred RoW. Input from concerned landowners was considered by M&NP for the purpose of making revisions to the proposed RoW. As well, further detailed engineering and environmental studies were conducted to gain a better understanding of the corridor and RoW conditions. The results of these studies were also considered by M&NP for the purposes of making revisions to the proposed RoW. Revisions made to the proposed RoW were then incorporated into the final RoW alignment which was submitted to the Board in February 1998.

Chapter 3

Landowner Objections

3.1 Landowner Objections

In response to section 34 notices, the Board received approximately 37 objections. The Board proceeded to issue the MH-3-98 Hearing Order and DOP, which specified the issues to be considered in the detailed route hearing. Parties were reminded that matters which were the subject of the GH-6-96 proceedings would not be reconsidered in the detailed route hearing. In addition, the Board indicated that hearings would not be set down for landowners whose sole ground for objection was the amount of compensation being offered by M&NP or if it was determined that there were insufficient grounds for an objection.

After receiving further information from landowners, the Board made a determination of the landowners which would be granted a hearing and published the List of Parties. In a number of cases, further negotiations between landowners and M&NP resulted in resolution and obviated the need for a detailed route hearing.

The Board subsequently held hearings into 15 landowner objections, in four locations (i.e. Fredericton, NB; Moncton, NB; Stellarton, NS; and Halifax, NS)

3.2 Board Comments on Generic Issues Raised by Landowners

a) Compensable Effects on Landowners

In a number of cases, M&NP argued that, because the effects on a particular landowner were compensable, the proposed detailed route should be approved. The Board considers that some landowners' concerns, although related to compensation, included elements that extend beyond matters of pure compensation and, therefore, should be heard for the purposes of assisting the Board in determining the best possible detailed route. In the Board's view, landowners' concerns are only to be excluded from the Board's consideration where they are based solely on matters of compensation.

b) Pipeline Safety and The 30 Metre Safety Zone

During the course of the proceedings, several parties raised concerns about living in proximity to a natural gas pipeline on the grounds of the risks of a potential incident or because of misperceptions about the nature of the restrictions on activities in the 30 metre safety zone.

Pipeline Safety

Pipelines are recognized the world over as the safest way to transport natural gas. In North America, there is a grid of pipelines connected together at a number of "hubs" which safely transport gas from thousands of production facilities to markets across the continent. In Canada, there are over 70,000 km of transmission pipeline, 35,000 km of natural gas liquids pipeline and 246,000 km of distribution pipeline.

Ensuring pipeline safety is a primary responsibility of the NEB, which presently regulates approximately 40,000 kilometres of large-diameter high-pressure transmission pipelines. NEB-regulated pipelines possess a solid and respected safety record over the Board's 40-year history.

The Board is of the view that, through imposing high-standard technical requirements for pipeline systems and continually monitoring pipeline integrity, safety risks are minimal.

30 Metre Safety Zone

The NEB is responsible for ensuring the safety of pipelines under its jurisdiction. Section 112 of the Act and the *National Energy Board Pipeline Crossing Regulations, Part I and Part II* (the "Regulations"), provide for the safety of the public and the safe operation of pipelines under the NEB's jurisdiction.

Section 112 requires Board approval for the construction of facilities across, on, along or under a pipeline or any excavation by power-operated equipment or explosives within 30 metres of a pipeline RoW. The 30 metre safety zone is not to be confused with the RoW acquired by a pipeline company for the construction, operation and maintenance of its pipeline. In the RoW, landowners are prohibited from carrying out many activities and the pipeline company acquires an interest in the land pursuant to the easement agreement. By contrast, in the 30 metre safety zone, a pipeline company holds no property interest and landowners may continue to carry out usual activities, subject to the provisions of section 112 of the Act and the Regulations.

The 30 metre safety zone serves to protect the pipeline from third party damage which may harm the environment or place the public at risk, and to protect persons working or living in the vicinity of the pipeline.

c) Co-existence of Agricultural/Logging Activities and the Pipeline Easement

The Board notes that in its experience with pipelines there has been little or no impact on the continued use, for agricultural or logging purposes, of land that is subject to a pipeline RoW. Once a pipeline is installed and the RoW returned to its pre-construction state, it is standard practice to allow existing agricultural uses to continue across the surface of the RoW. The Board notes that M&NP stated, in its Letter of Commitments (see Section 3.2 (d)) filed in these proceedings and in the GH-6-96 proceedings, that certain surface uses of the easement would be permitted, including general agricultural activities.

Logging activities are not precluded due to the presence of a pipeline. However, in carrying out logging activities in the vicinity of a pipeline, an operator must be aware of certain restrictions, and in particular the prohibition on driving heavy logging equipment across the RoW at locations other than those designated for crossing. M&NP has made specific undertakings with respect to crossings, as set out in its Letter of Commitments. Implementation of these commitments, together with standard pipeline operating practices, should ensure that impacts on landowners are minimized. Remaining impacts on landowners or damage caused by construction or operation of the pipeline are normally matters which can be dealt with through compensation.

d) Commitments made by M&NP during the Detailed Route Proceedings

The Board notes that M&NP has documented its policies and practices, regarding the construction and operation of its pipeline, in its Environmental Protection Plan ("EPP") and its Letter of Commitments as filed in the course of these proceedings.

Specifically, the EPP outlines M&NP's mitigative measures to be implemented by its employees during the construction phase of the pipeline in order to protect the environment and minimize potential adverse effects. The EPP is subject to review by the Board under a separate proceeding. The Letter of Commitments is a document that was provided to all potentially affected landowners in the spring of 1997 and sets out M&NP's landowner policies based on consultation with various interested parties. This Letter contains policies related to project communication with landowners and construction techniques.

The Board also notes the specific commitments made by M&NP during the course of these proceedings for individual cases. Any order issued for the approval of a PPBOR would include the condition requiring the fulfilment of all commitments made by M&NP in the course of these proceedings.

3.3 Specific Landowner Cases

The hearings conducted by the Board in response to individual landowners' objections are summarized in the following sections. The specific cases are discussed in the order in which they were heard by the Board.

3.3.1 H. Franklin Irving

Description of Proposed Route (PPBoR Sheet 82)

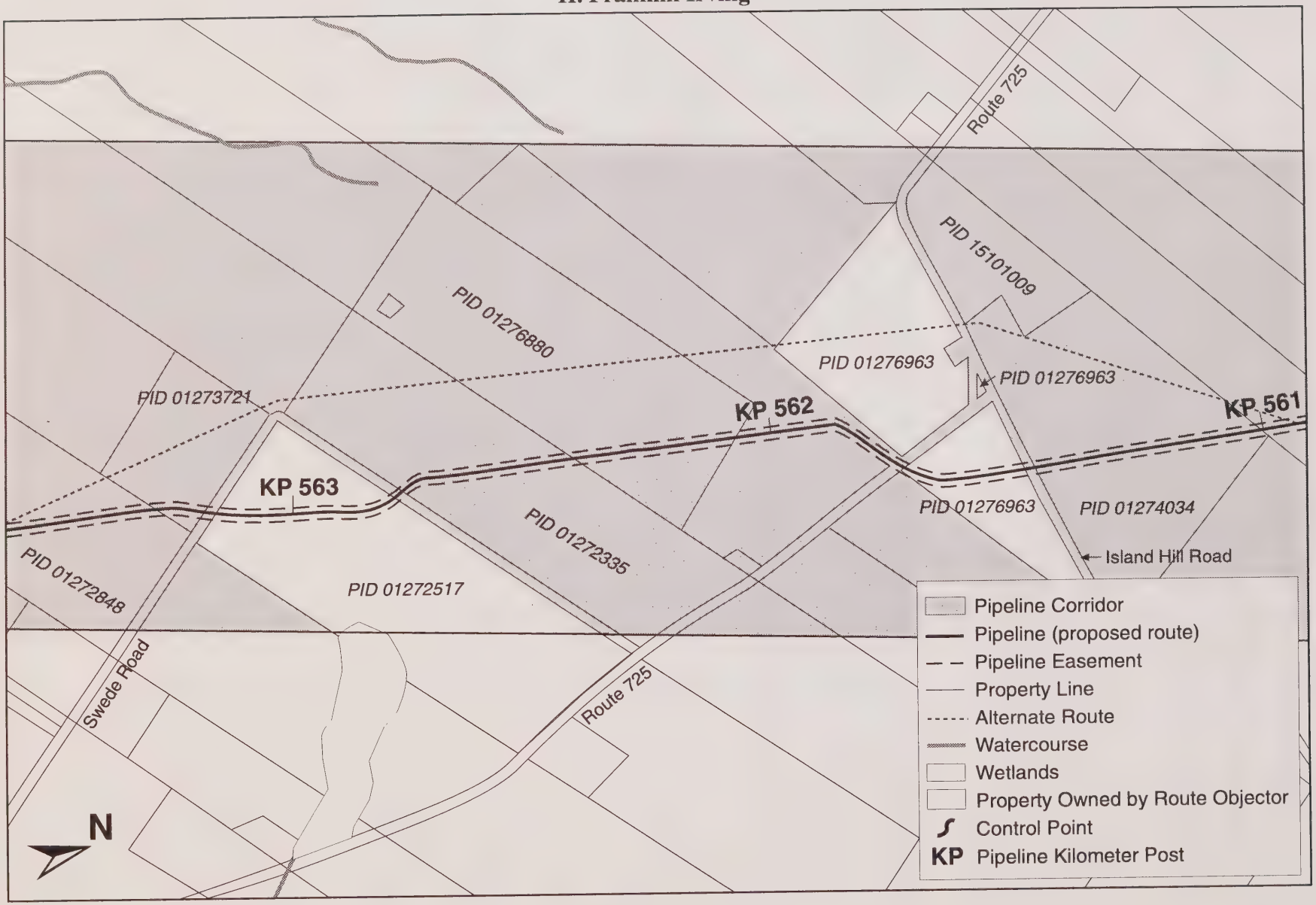
M&NP's proposed route crosses two parcels of land, the first identified as Property Identification ("PID") 01276963 and the second as PID 01272517, owned by Mr. Irving between Kilometre Post ("KP") 561.5 and 563.5 of the pipeline. This land is located in the Upper Little Ridge area approximately 10 km west of St. Stephen, in Charlotte County, NB. In this area, the proposed route runs in a north-to-south direction. The route would intersect the first parcel of land at KP 561.6, and then cross Highway 725 at the southern boundary of this parcel. The route would then continue south and bisect the west corner of Mr. Irving's second affected parcel close to KP 562.9. The terrain crossed by the proposed route is generally forested land, some of which has been farmed in the past.

M&NP established two control points between which the proposed detailed route would pass through Mr. Irving's properties. The upstream control point occurs at KP 559.8 where the route crosses Meadow Brook at an ideal location. The downstream control point occurs at 564.7 where the route crosses the Saint Croix River at the Canada/United States border. The proposed route between those two controls points follows a relatively straight line.

Nature of Objection

Mr. Irving's objection was based on the impact the proposed detailed route would have on his forestry operations and subdivision plans.

Figure 3.3.1
H. Franklin Irving



Alternate Route

Mr. Irving discussed an alternate route with M&NP representatives in the fall of 1996 when he suggested the preferred route be moved westward on PID 01276963. The alternate route would diverge from the proposed route in a southwest direction starting at KP 561, cross Highway 725 and traverse Mr. Irving's first parcel to the west of the proposed route. The alternate would continue south avoiding the Swede Road and Mr. Irving's second parcel of land. It would then turn eastward and rejoin the proposed route at approximately KP 563.5. Based on the evidence, the alternate route crosses similar terrain to the proposed route and is approximately 80 metres longer.

Views of the Parties

Mr. Irving stated that M&NP's proposed detailed route would negatively affect his livelihood as he derives his income from his land by selling wood and subdividing lots. In particular, Mr. Irving stated that the proposed route would impede his ability to subdivide property and to harvest wood on both properties in the manner to which he is accustomed. With respect to PID 01276963 and based on the contour of the land in that area, Mr. Irving contended the proposed route would result in a parcel of land which would not lend itself to being subdivided into more than one lot. With respect to PID 01272517, the angle of the route across the property would restrict the subdivision potential and the current access that he uses to take wood off the property.

M&NP contended that the pipeline's impacts on subdivision potential and timber harvesting were both compensable matters and should be addressed by a compensation panel on their respective merits. In addition, M&NP indicated that the existence of a pipeline does not preclude subdivision activity.

Mr. Irving indicated that he had suggested his alternate route to M&NP representatives in the fall of 1996. The alternate route would cross the western portion of his property, which is open field, thereby having less negative impact to Mr. Irving. Mr. Irving stated his belief that the terrain along the alternate route was consistent with M&NP's route selection criteria.

Prior to finalizing its preferred detailed route, M&NP stated that it had realigned the route slightly to address Mr. Irving's perceived concerns. Mr. Irving testified that he was not aware of this realignment and, in any case, M&NP's realignment did not reflect Mr. Irving's suggested alternative route.

M&NP raised four issues with respect to the alternate route. First, the area to the west of the proposed route contains more residences along Highway 725. M&NP determined that the alternate route would pass between two residences that are approximately 250 to 300 metres apart. However, M&NP acknowledged that the minimum distance from the pipeline to residences for this project was 20 metres.

Second, two additional properties would be affected by the alternate route. No information on the impact to these additional landowners was placed into evidence.

Third, the alternate route would pass very close to a provincially-determined heritage site. M&NP acknowledged that mitigation for areas with high archeological potential would be applied to this site in the same manner as would be applied to other sites along the pipeline route.

Fourth, the alternate route would be approximately 80 metres longer than the proposed route. M&NP's primary principle for route selection was to reduce the length of the pipeline in order to address increased potential environmental impact, number of affected landowners and cost of the project. However, in regard to costs, M&NP estimated that the cost of the longer alternative route would be approximately $12,000 less than the proposed route because of the reduction in the required number of pipeline bends and road crossings.

Mr. Philip Christie intervened in the case of Mr. Irving. Mr. Christie questioned M&NP on its Letter of Commitments with respect to special mitigative measures concerning hunting and trespassing. M&NP's witnesses assured Mr. Christie that the Company would be willing to look at specific proposals by a landowner, including those of a different nature over and above those described in its Letter of Commitments.

Views of the Board

In the Board's view, Mr. Irving demonstrated that the use of his land would be adversely affected by the proposed route. In order to reduce the effects on his property, Mr. Irving suggested an alternate route to M&NP in 1996. M&NP noted that it had not carried out a detailed study to allow it to make an accurate comparison between the two routes. However, the evidence of the witnesses was that, for a number of the Company's criteria, there would likely be little difference between the proposed route and the alternate.

The Board is of the view that Mr. Irving presented significant concerns which extend beyond those that are compensable. His concerns do not relate exclusively to a potentially lower value of subdivided lots. Mr. Irving raised the concern that the proposed route would pass through a potential wet area that was not assessed or taken into account by M&NP. While this concern may not form an absolute barrier to the construction of the pipeline along the proposed route, it may be sufficient to raise a doubt as to whether this is the best possible route. This is particularly true in this case where Mr. Irving has proposed an alternate route.

Although aware of Mr. Irving's alternate route for almost two years, M&NP has not conducted a detailed study to allow a careful analysis of this route and a comparison between it and the proposed route. Therefore, the Board is of the view that further information is required before a decision can be made in respect of the proposed detailed route.

Decision

The Board directs M&NP to conduct an evaluation of the alternate route proposed by Mr. Irving, to facilitate a detailed comparison of M&NP's proposed route and the alternate proposed by Mr. Irving.

The Board further directs M&NP to serve the results of that evaluation on the Board and parties to the hearing into the Irving objection.

The Board will establish a procedure for the examination of that information when it is filed.

The Board reserves its decision on the Irving objection, pending the filing and examination of that further information.

3.3.2 Philip F. Christie

Description of Proposed Route (PPBoR Sheet 80)

The route proposed by M&NP would cross agricultural land, identified as PID 15017981, which is located near KP 548 (immediately adjacent to Highway 745) in the Oak Hill area of Charlotte County, NB. This property is owned by David and Helen Demont and is operated by Mr. Philip Christie and his family. The proposed route in this area follows a relatively straight line between two control points, one at Highway 745 and the other located at the narrowest crossing location of Green Brown Brook at KP 550. The principal routing constraints in this area, which were not disputed by Mr. Christie, include wetlands and residences. The property contains both productive farmland and woodland.

Nature of Objection

The property landowners signed an option agreement in respect of the proposed route. Mr. Christie filed an objection with respect to the proposed route in his capacity as a tenant of the property which his family has farmed for more than 35 years. Mr. Christie's objection related specifically to the construction methods to be utilized for the proposed route and potential modifications to M&NP's procedures in order to eliminate negative impacts on the tenant.

Alternate Route

No alternate route was proposed by Mr. Christie.

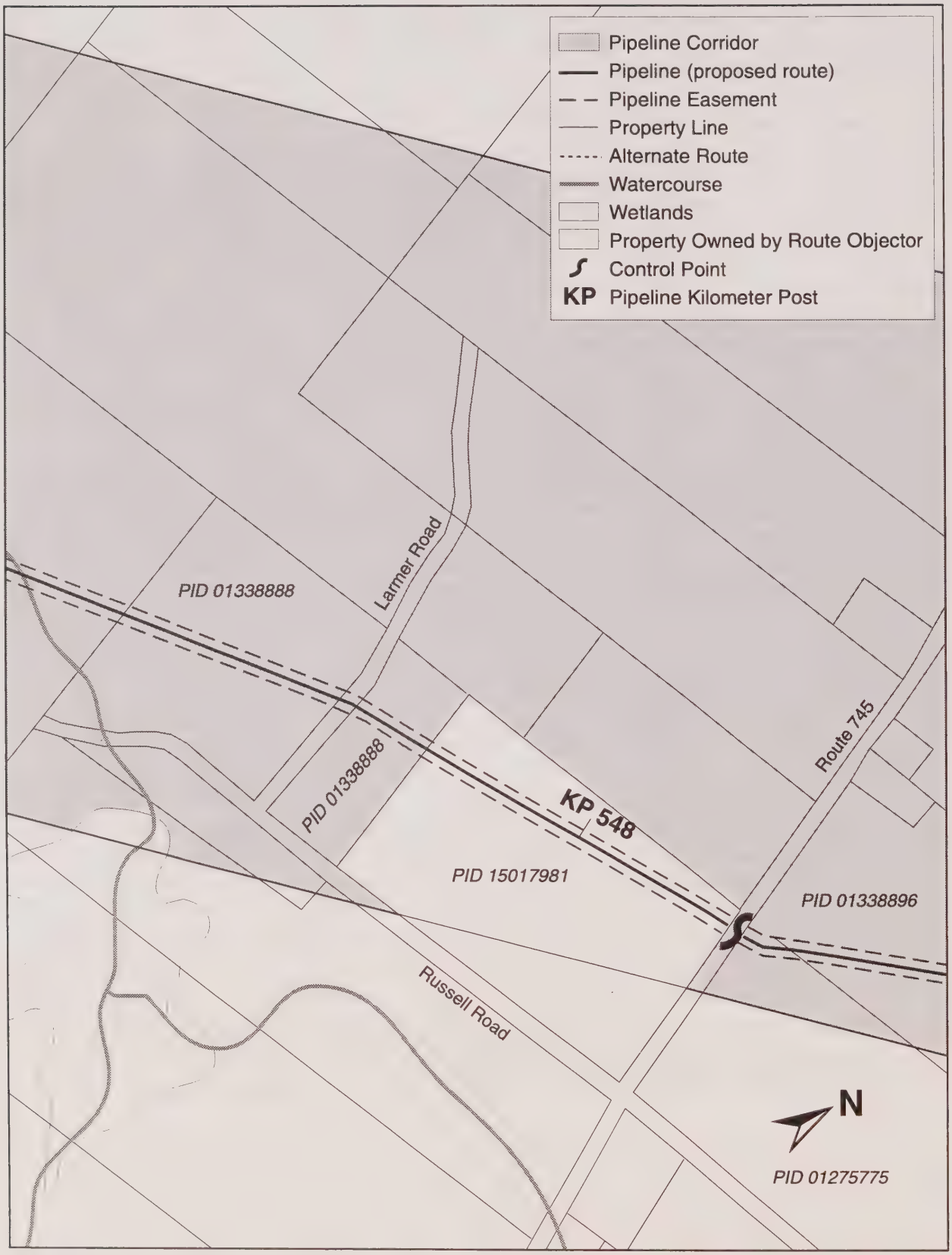
Views of the Parties

Mr. Christie raised issues with respect to specific provisions of M&NP's EPP. His main concern was that the tenant is the one who will suffer any damage which has to be mitigated, yet the EPP's solution for mitigative measures is to pay compensation to the landowner[1]. In the absence of a written tenancy agreement, Mr. Christie doubts that these proceeds will be applied to damages suffered by the tenant.

Mr. Christie suggested that the EPP be amended to reinforce the principle that the actual reclamation work be done either by the contractor or sub-contracted to the tenant, rather than paying compensation to the landowner. M&NP replied that it would be willing, at the end of its reclamation procedures, to meet with the landowner and the tenant. M&NP stated that it would have no objection to paying the tenant to continue final clean-up or restoration work that would still be required provided an agreement is reached among all of the parties concerned.

[1] The Board notes that entitlement to compensation is a determination to be made pursuant to section 75 of the Act.

Figure 3.3.2
P. Christie



Views of the Board

Condition 12 to Certificate GC-95 for the mainline facilities in GH-6-96 required M&NP to prepare and file with the Board an EPP for its approval. M&NP's EPP has been filed and is undergoing a detailed assessment. The EPP, if approved, would address issues regarding specific practices during the construction of the pipeline and the reclamation of the land after construction.

The Board is satisfied that M&NP's specific commitment to meet with the landowner and tenant at the end of its reclamation work to discuss mutually acceptable solutions for any further restoration and/or reclamation work will address Mr. Christie's concern. Therefore, the Board is satisfied that the route proposed by M&NP is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

3.3.3 Percy Khoury

Description of Proposed Route (PPBoR Sheet 67)

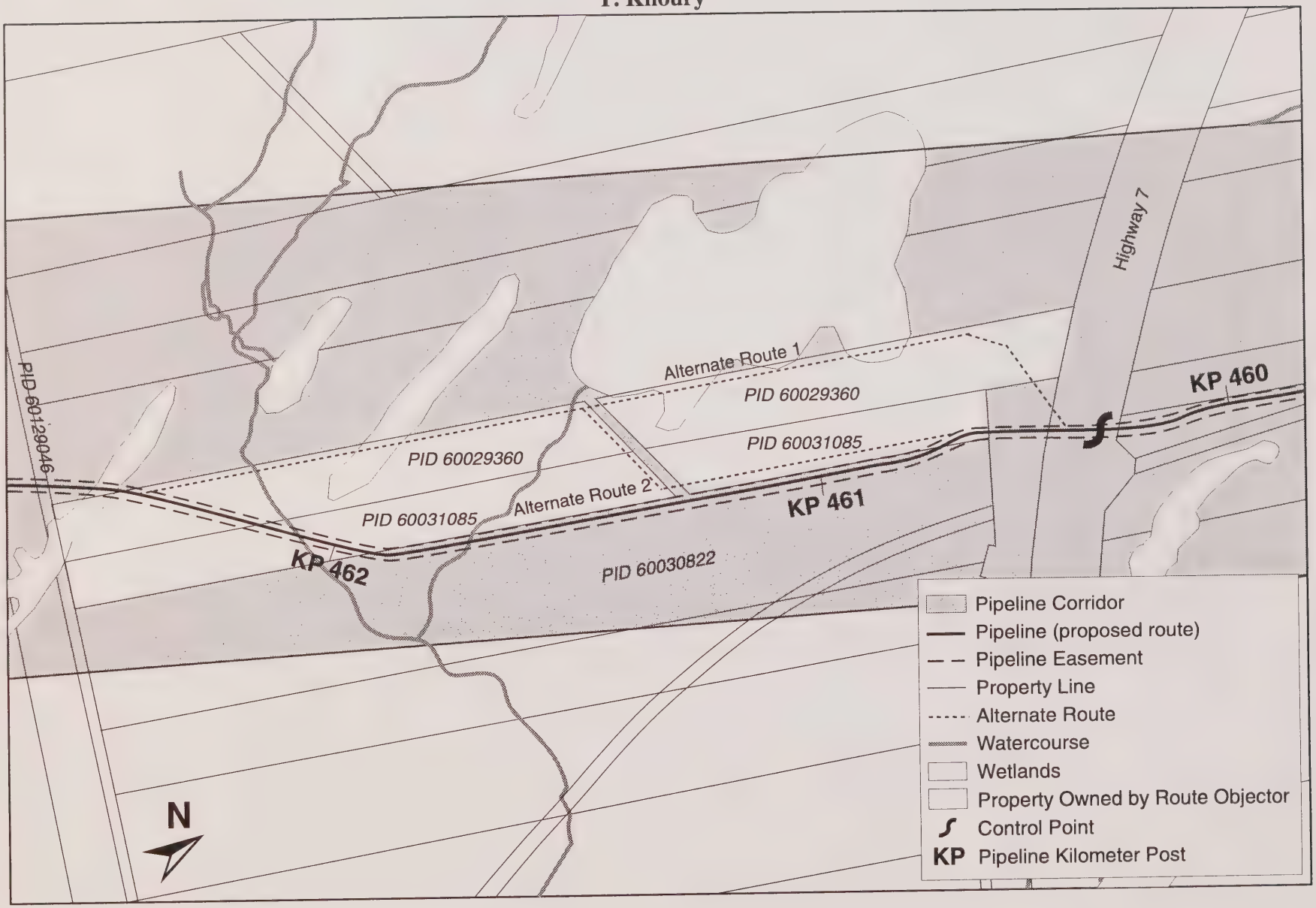
The route proposed by M&NP would cross two properties, the first parcel identified as PID 60031085 and the second as PID 60029360, jointly owned by Mr. Percy Khoury and Mr. Charles Khoury between KP 460.5 and 463. These properties are located south of Fredericton, in Sunbury County, NB. The proposed route would follow a southwest direction as it approaches and crosses the upstream control point, Highway 7, at KP 460.3. After crossing Highway 7, the alignment would cross about 100 metres of PID 60031085 then run outside and parallel to the boundary line of the Khoury property on PID 60030822. The alignment then would cross a power-line easement and enter the Khoury property again at KP 462. At KP 462.5, the route would exit the Khoury property and traverse a wetland. From this point, the route would cross another power-line easement and proceed to Highway 655. On the subject properties, the terrain is comprised of both forested and agricultural lands.

The upstream control point is located at KP 460.3, where the proposed alignment would cross Highway 7. The proposed crossing would be in a location which is acceptable to the New Brunswick Department of Transportation and is preferred by M&NP, as it is in a fill zone rather than a cut zone. The site was also selected to align along a property boundary in order to avoid a downstream wetland north of KP 462. Although a wetland is traversed at KP 462.5, M&NP submitted that the wetland would be crossed at its narrowest point. The downstream control point is located at KP 467.2, where the proposed route crosses Highway 655.

Nature of Objection

Mr. Khoury's objection was based on the impact of the pipeline route on property values and the safety implications of construction across a new highway.

Figure 3.3.3
P. Khoury



Alternate Routes

Two alternate routes were proposed by Mr. Khoury. Alternate 1 would diverge from the proposed route at Highway 7 and would bend west to cross the portion of Mr. Khoury's land that was previously expropriated by the Province of New Brunswick. It would then follow along the western boundary of his first property and would re-connect with the proposed route at approximately KP 462.5. This alternate route would cross two additional wetlands.

Alternate 2 would depart from the proposed route just prior to the Khoury property and proceed in a southerly direction following the eastern boundary of his property (PID 60031085) to the power-line easement at approximately KP 461.3. It would then curve to the west paralleling the power-line easement and proceed along the western boundary of his second property until it connected with the proposed route at approximately KP 462.5. Alternate 2 would cross one additional wetland.

Views of the Parties

Mr. Khoury expressed concern with respect to future land use and land planning. In particular, he submitted that routing the pipeline along the eastern boundary line for the entire length of both properties could affect the way zoning might occur on his potential future subdivisions.

Mr. Khoury suggested that the construction of a new toll road as well as a pipeline could result in a cumulative effect from a safety point of view, both during construction and in the long term. In response, M&NP indicated that it had consulted with both the New Brunswick Department of Transportation and the Maritimes Road Development Corporation to address safety concerns which could arise with respect to the construction of the pipeline.

Mr. Khoury also expressed concern with respect to the restrictions imposed by the 30 metre safety zone. M&NP indicated that restrictions within the safety zone were limited to excavation with mechanical equipment or blasting with explosives. M&NP also indicated that logging operations that did not involve excavation with mechanical equipment would not fall within the safety zone requirements.

In support of its proposed route, M&NP submitted that its proposed route would avoid most wetlands and wet areas while following approximately a straight line between control points. M&NP stated that its one crossing of a wetland was unavoidable and would be located at its narrowest point. With respect to the alternate routes proposed by Mr. Khoury, M&NP indicated that these routes entailed the crossing of additional wetlands.

Views of the Board

In the Board's view, the evidence in support of Mr. Khoury's objection regarding potential impacts on his subdivision plans or the 30 metre safety zone did not raise a doubt regarding the appropriateness of the proposed route.

With respect to the alternate routes, the Board is mindful of M&NP's commitment to avoid Class 1 constraints, such as wetlands. The mere presence of a wetland, however, should not necessarily preclude consideration of an alternate route. At the same time, in order for the Board to consider the crossing of a Class 1 constraint by

an alternate route as acceptable, the evidence should demonstrate that there is a valid rationale for doing so. The Board is of the view that Mr. Khoury did not demonstrate such a rationale for crossing the additional wetlands.

The proposed route represents an appropriate balance of all relevant factors and, therefore, is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

3.3.4 Daniel/Claudia Donnelly and Charles/Jeannitta Maillet

Description of Proposed Route (PPBoR Sheet 44)

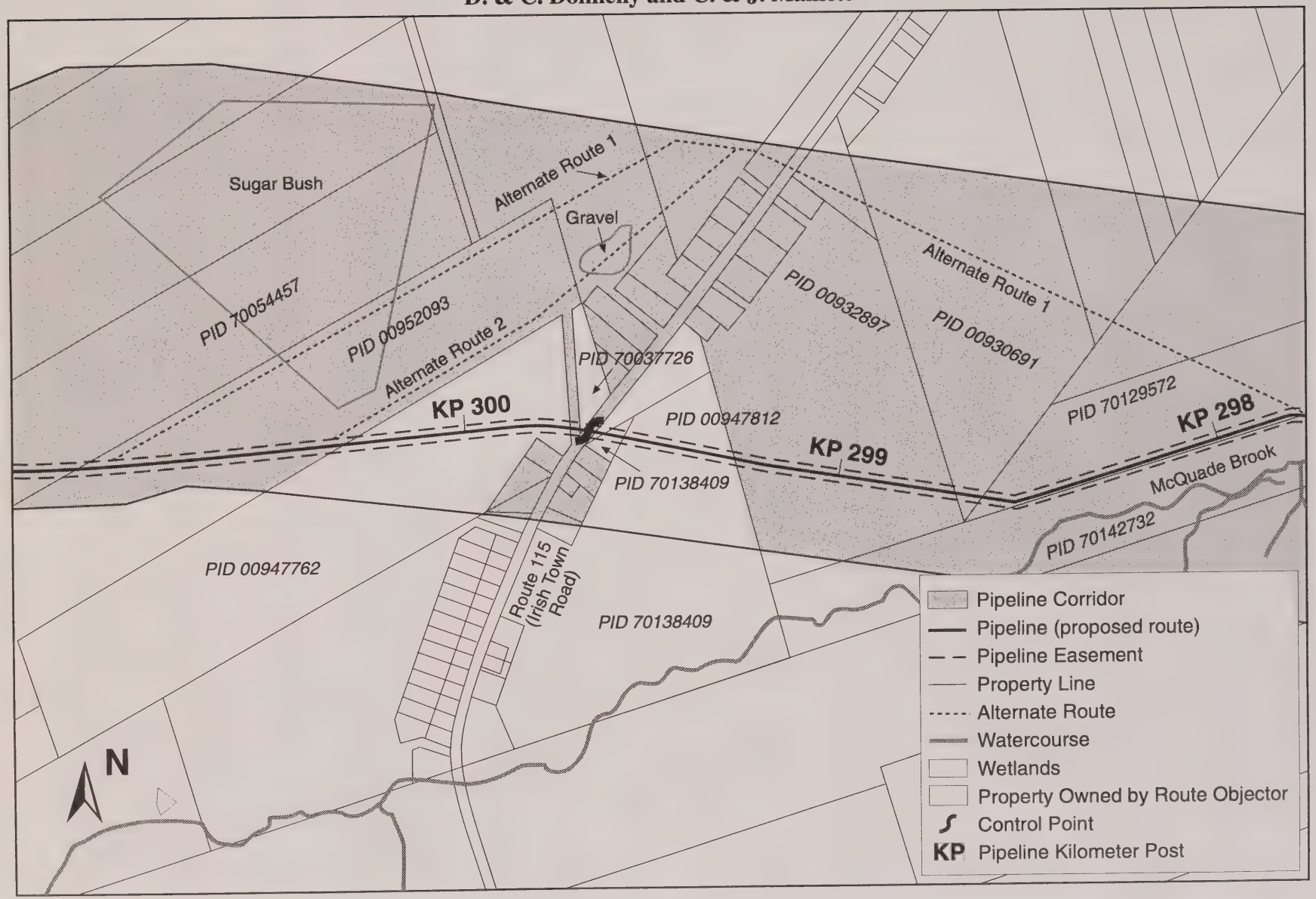
Mr. and Mrs Donnelly ("the Donnellys") and Mr. and Mrs. Maillet ("the Maillets") each own properties located in Westmorland County, New Brunswick. These properties are adjacent to Highway 115 (the Irishtown Road), on the north side of McQuade Brook.

M&NP's proposed route would enter the Donnellys' property at KP 299.2 and would proceed in a westerly direction across three of the Donnellys' properties, PID 70011390, PID 70138409 and PID 00947812. It would exit the Donnellys' property at KP 299.6, crossing the Irishtown Road. The proposed route would enter the Maillets' property on the west side of the Irishtown Road. It would continue across a short portion of PID 70037726, enter PID 00947762 at KP 299.7, and then leave the Maillets' property at KP 300.2. The proposed route would bend at KP 299.7 in order to align the pipeline with the downstream control point and prevent the pipeline from intersecting with a sugar bush, which is designated as a Class 1 constraint. The proposed pipeline would be approximately 180 metres from the Maillets' residence at its closest point.

M&NP stated that it selected the proposed route through the Donnellys' and Maillets' land based on its control points determination. The upstream control point at KP 296.8 is where the proposed route would cross a flat, straight portion of the Cove Road and align well with an acceptable crossing of the McQuade Brook. The control point at KP 299.6 was selected in order to avoid the prevalence of homes along the Irishtown Road. This crossing location is unencumbered by residences. The downstream control point is at a crossing of Highway 490 that would avoid homes, a residential laneway, and a sugar bush area to the east of the highway.

The terrain along this portion of the proposed route is gently undulating from KP 297.7 to KP 301.0. Most of this section is forested with some areas cleared by logging operations. Hayland is found from about KP 300.7 to KP 301.8. The proposed route would run parallel to the McQuade Brook for approximately 700 metres.

Figure 3.3.4
D. & C. Donnelly and C. & J. Maillett



Nature of Objections

The Donnellys' objections to the proposed detailed route were based on concerns regarding safety, lifestyle impacts and impact on future subdivision plans.

The Maillets' objections to the proposed route were based on the potential of a pipeline accident and a safety concern for the crossing of the Irishtown Road, as well as the impact on their subdivision plans and property values.

Alternate Routes

The Maillets and Donnellys retained the services of a registered land surveyor to study alternate routes. An alternative route was proposed jointly by the Maillets and Donnellys. This alternate route (Alternate 1) would leave the proposed route at KP 297.7 and would proceed in a northwest direction to meet the Irishtown Road at the northern boundary of the certificated corridor. Alternate 1 would then bend to the west, enter and run adjacent to the northern boundary of PID 00952093 and converge with the proposed route at KP 300.8. This alternate route would avoid both the Maillets' and Donnellys' land.

During the proceeding, a slight modification was made to Alternate 1 in order to avoid a sugar bush area located on PID 00952093. The modified alternate route was considered as Alternate 2.

Views of the Parties

The Donnellys

The Donnellys were concerned about the impact the proposed route would have on the use of their land. Mr. Donnelly stated that his family hikes and generally enjoys the use of the area adjacent to McQuade Brook, which is nearby and parallel to the proposed route. He believed that the proposed route would thereby detract from his family's enjoyment of this area. He also stated a concern for the potential for bank erosion along the McQuade Brook as a result of construction of the pipeline.

M&NP stated that the proposed route would run parallel to McQuade Brook for a distance of about 700 metres and, at its closest point, it would be about 60 metres from the brook. The proposed route would be above the bank of the brook and on flat terrain. M&NP was confident that construction and operation of the pipeline would not cause an erosion problem along the bank.

Mr. Donnelly stated that his lands are in various stages of approval for subdivision. He contended that the proposed route would jeopardize his family's plans for subdivision by adversely affecting the market value of the lots.

M&NP indicated that the subdivision plans of the Donnellys have not received all approvals from the local and provincial planning authorities. M&NP submitted that the existence of a pipeline would not preclude any subdivision plans of the Donnellys. It noted that a pipeline could be designed into the subdivision plan and the impact on any lots of the existence of the pipeline could be mitigated by compensation. It stated that compensation is not an issue for the NEB to consider.

In his evidence, Mr. Donnelly stated that, at the proposed crossing of the Irishtown Road, there is a sharp bend in the road. Several vehicle accidents have occurred at this location in the past and the Donnellys were concerned that, during construction of the pipeline, there would be an increased potential for accidents to occur. Mr. Maillet also expressed concern for the potential of vehicle accidents.

M&NP submitted that the crossing of the Irishtown Road would not create a safety hazard. It stated that it would work closely with the provincial highway department to ensure that flagging and signs would conform to provincial criteria. M&NP stated that it has received approval from the New Brunswick Department of Transportation for the crossing of the Irishtown Road and that it would implement its own safety programs to further ensure that its crews and the public were not subjected to unsafe conditions at any of its highway crossings.

The Maillets

Mr. Maillet stated that his family is fearful of the proximity of the proposed pipeline to their residence. M&NP noted that the Maillet residence is about 180 metres from the proposed pipeline. M&NP stated that a minimum distance of 20 metres is acceptable provided appropriate mitigation measures are in place.

At the crossing of the Irishtown Road, the proposed pipeline would be approximately 50 metres from the nearest residence to the south and 150 metres from the nearest residence to the north. M&NP stated that there are no provincial guidelines that stipulate a minimum setback distance between a pipeline and residences. In the area of the crossing of the Irishtown Road, the pipeline would be designed to meet the appropriate design criteria for existing and potential housing in this vicinity.

Mr. Maillet stated his concern about the impact on his plans to develop a residential subdivision. The Maillets had the land surveyed for a residential subdivision and the survey revealed that 12 lots would be crossed by the proposed route. Mr. Maillet submitted that it would be very difficult to sell residential lots that were in close proximity to a natural gas pipeline and the proposed route would also detract from the value of the Maillets' home property.

M&NP indicated that the subdivision plans of the Maillets have not received all approvals from the local and provincial planning authorities and that there is no record of subdivision plans having been filed with the authorities. M&NP submitted that the existence of a pipeline would not preclude any subdivision plans of the Maillets. It noted that a pipeline could be designed into the subdivision plan and the impact on any lots of the existence of the pipeline could be mitigated through compensation. It stated that compensation is not an issue for the NEB to consider.

The Maillets and Donnellys believed that Alternate 2 would meet all of M&NP's routing selection criteria with the exception that it would be approximately 200 metres longer than the proposed route. They argued that the extra length is not an unreasonable measure to address their concerns.

M&NP discounted the alternate routes for several reasons. Both alternates would increase the length of the pipeline by 200 metres, which would increase the cost of construction, increase the surface disturbance and add two more landowners that are not affected by the proposed route. Both alternates would cross the Irishtown Road at a point that has equal potential for subdivision as does the proposed route, thereby not lessening this potential impact. Alternate 1 would transect an existing sugar bush

area which M&NP had identified as a Class 1 constraint. Alternate 2 would cross an aggregate pit which had been identified by air photo interpretation. Although the present status of the aggregate pit was not determined, the route might impede potential extraction at the pit. As well, Alternate 2 would run parallel to the west boundary of the Maillet property and therefore would not appreciably decrease the Maillets' concerns regarding any perceived impacts to their subdivision plans, property values and safety.

Views of the Board

The Board is of the view that the concern of the Donnellys and the Maillets, that the proposed route would impact adversely on their subdivision plans, is a matter of compensation. There is no evidence to suggest that the proposed route for the pipeline would render future subdivision plans impossible. In the view of the Board, the landowners' concern regarding the effects on their subdivision plans do not extend beyond a compensable issue to any significant degree. The Board notes that subdivisions can be designed taking into account pipelines and further notes M&NP's willingness to work with landowners in order to facilitate future development.

The Board is satisfied, on the evidence, that the distance between the right-of-way and McQuade Brook and the proposed methods of construction would mitigate any potential impacts on the Brook.

The Board notes that the proposed route crossing of the Irishtown Road will be accomplished in accordance with provincial and CSA safety standards and is satisfied that the construction of the crossing can be carried out in a safe manner. After the completion of construction, it is unlikely that the existence of the pipeline at Irishtown Road will have any impact on the safety of the roadway at that crossing.

The Board is of the view that either of the alternate routes would pose potentially greater problems than the proposed route. Both alternates would increase the length and surface impacts of the pipeline. The Board notes that there would be additional landowners affected by the alternate routes. Alternate 1 would cross a Class 1 constraint. Alternate 2 would not remove the pipeline from the proximity of the Maillets' residence and proposed subdivision.

The proposed route represents an appropriate balance of all relevant factors and, therefore, is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in these cases, and that M&NP has committed to the most appropriate methods and timing of construction.

3.3.5 Robert D. Hannington

Description of Proposed Route (PPBoR Sheet 43)

The route proposed by M&NP would cross two properties (PID 70034681 and PID 70034699) between KP 291.8 and KP 292.6 which are jointly owned by Mr. Robert Douglas Hannington and his brother. This property is located in the Scotch Settlement area of Westmorland County, NB. The proposed route would follow a western alignment as it approaches and crosses the Cape Breton Road at KP 292.3, then would swing north following the boundary line between the two properties to a crossing point at the Shediac River at 292.6. On the subject properties, the proposed route crosses both forested and agricultural lands.

The upstream control point from the Hannington property occurs at KP 289 where the route would cross Weisner Road at an ideal location between housing. The next control point occurs at KP 292.2 at the crossing of Cape Breton Road and was chosen in order to avoid farmland, to align itself along bushland and pasture field, and to begin the approach to the downstream Shediac River crossing.

Nature of Objection

Mr. Robert Hannington objected to the proposed route on the basis of optimum land use.

Alternate Route

The alternate route proposed by Mr. Robert Hannington would run approximately 30 metres to the east and parallel to the proposed route, between the Cape Breton Road and the Shediac River. Both the proposed and alternate routes would cross forested and agricultural land. While the proposed route would bisect an existing forested area, the alternate route would remove a forested area directly adjacent to an agricultural field.

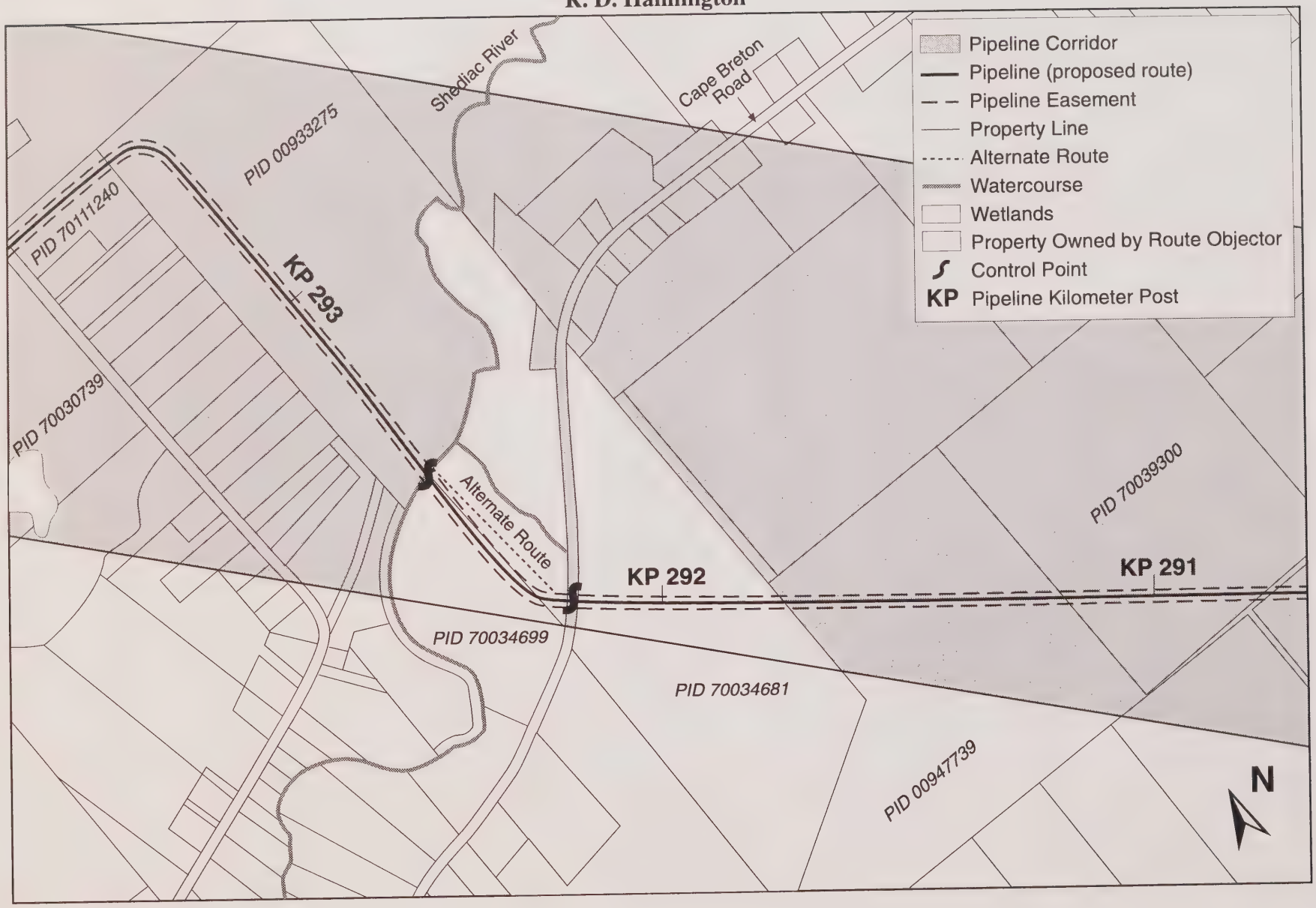
Views of the Parties

Mr. Robert Hannington stated that the isolation of a small stand of trees resulting from the proposed route would increase the risk of windfall and result in the inevitable loss of those trees. He also indicated that the resulting cleared area would have far more potential as an agricultural field than if it remained treed.

M&NP stated that Mr. Robert Hannington's alternate route would be acceptable based upon its environmental and engineering considerations and that it would result in a slightly shorter pipeline. M&NP also stated that the alternate route would not affect the crossing location of the Shediac River and would only cause a minor change to the angle of the Cape Breton Road crossing. However, M&NP stated that it had been advised by Mr. John Hannington, co-owner of the property, of his concerns respecting the authority of Robert Hannington to unilaterally request a realignment and that he did not agree with a route away from the boundary line between the two properties.

M&NP argued that, in the absence of the agreement of both landowners regarding the alternate route, its proposed route should be determined to be the best possible detailed route.

Figure 3.3.5
R. D. Hannington



Views of the Board

The evidence indicates that both the proposed and alternate routes lie wholly within the subject properties. The Board notes that both the alternate and proposed routes would not violate any of the routing constraints established by M&NP. Both routes would result in the clearing of an approximately equal area of existing forested land. However, the proposed route would likely result in the isolation of approximately a half-hectare of forested area that may cause further loss of forest cover due to windfall. Therefore, in the Board's view, the alternate route would minimize both the loss of forested area and the fragmentation of contiguous forested land and would increase the area of productive agricultural land on Mr. Hannington's farm.

The Board is satisfied that the alternate route would result in a positive impact on Mr. Robert Hannington's farming operation. Therefore, on the evidence, the Board finds that the alternate route is the best possible detailed route for the pipeline.

Decision

The Board finds that the alternate route proposed by Mr. Robert Hannington is the best possible detailed route and therefore denies approval of the applied-for route of M&NP. The Board directs M&NP to file an amended PPBoR for the alternate route proposed by Mr. Hannington.

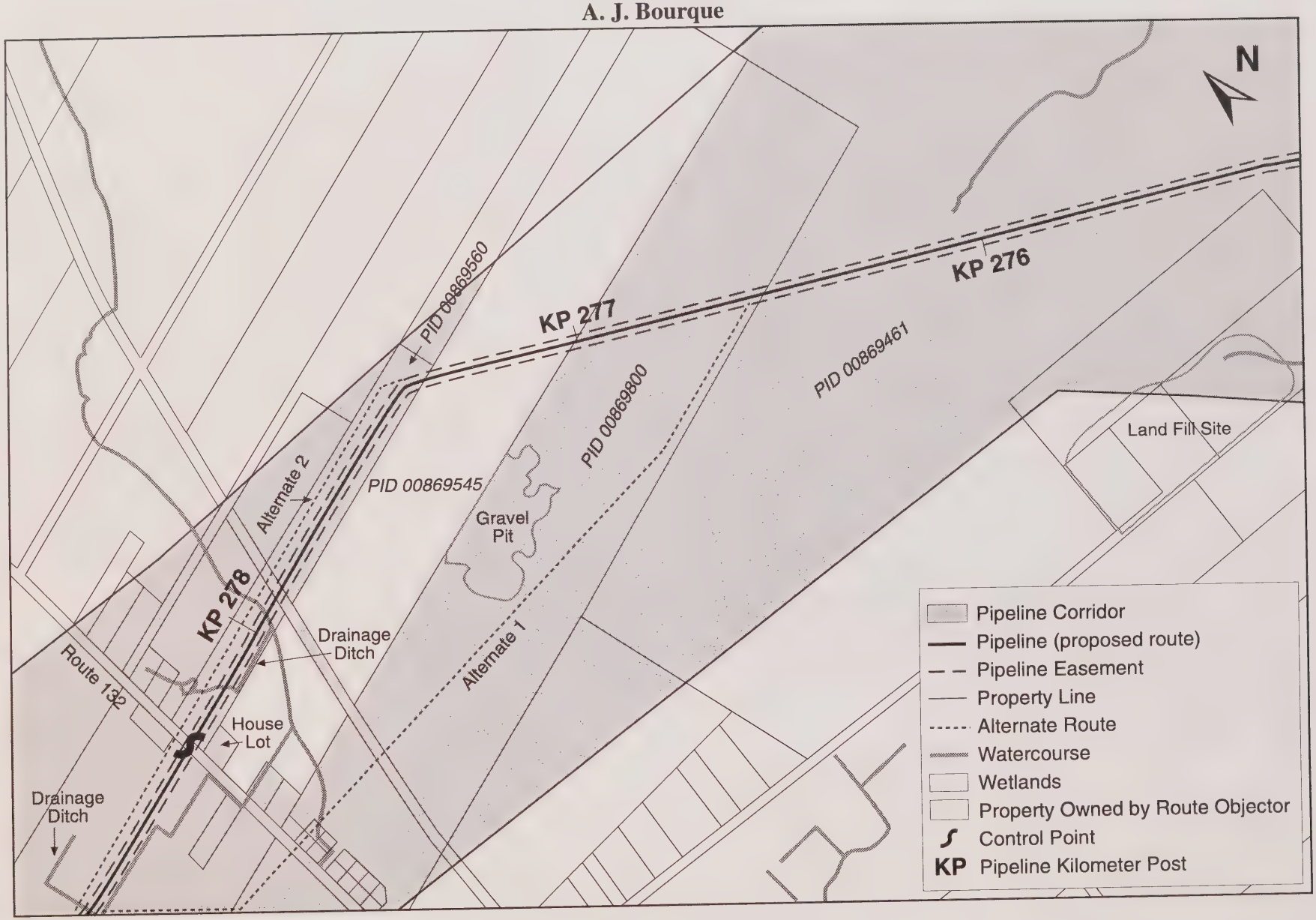
3.3.6 Alvin J. Bourque

Description of Proposed Route (PPBoR Sheet 41)

M&NP's proposed route would cross a property (PID 00869545) owned by Mr. Alvin Bourque. This property is located about five km south of Shediac, in the Westmorland County, NB. The proposed route would approach Mr. Bourque's property from the southeast, cross a power-line easement and intersect the southern boundary of PID 00869545 at KP 277. The proposed route would proceed in a northwest direction across Mr. Bourque's property and onto the adjacent property to the north. It would then parallel the property line of the adjacent land in a westerly direction, cross Highway 132 at KP 278.3 and continue west. This crossing would be equidistant between two residences by approximately 50 metres. The residence on the east side of Highway 132 belongs to Mr. Bourque. Although the proposed route is not on his property, the safety zone affects 10 metres of Mr. Bourque's residential lot. The terrain through which the proposed route would pass is relatively flat and mainly forested up to and including a portion of Mr. Bourque's property. The remainder of the route past Highway 132 is mainly agricultural.

M&NP submitted that the proposed route would be aligned between two critical control points. The upstream control point occurs at KP 275 where the route crosses the Scoudouc River at a location where the slope of the west bank is set back. As well, the crossing avoids a former dump and potentially affected areas associated with the dump. The downstream control point occurs at KP 278.3 where the route crosses Highway 132. M&NP asserted that this control point is the only area in the corridor that is open from housing and maintains a reasonable distance from homes.

Figure 3.3.6
A. J. Bourque



Nature of Objection

Mr. Bourque's objection was based on concerns related to the proximity of the pipeline to his residence, its impact on his agricultural operations and the inconvenience of being within the safety zone.

Alternate Routes

Mr. Bourque provided two alternate routes at the hearing. Alternate 1 would depart from the proposed route at approximately KP 276.6 and follow the southern property line of PID 00869800 for approximately 500 metres. The alternate route would then traverse PID 00869800 diagonally to its northwest corner, where two or three subdivided lots exist, cross Highway 132 and rejoin the proposed route at approximately KP 278.8. The distance between housing on Highway 132 along Alternate 1 would be approximately 100 metres. The terrain of Alternate 1 is flat, contiguous forested land with a power-line corridor and an access road to a gravel pit on PID 00869800. To the west of Highway 132, the terrain is mainly agricultural. The length of the alternate route would be approximately the same as the proposed route and, depending on a more detailed assessment, one additional stream crossing is likely.

Alternate 2 would follow the proposed route across Mr. Bourque's property to the adjacent PID 00869545. At this point, Alternate 2 would continue further north from the proposed route by about 10 metres and then travel parallel to the proposed route to KP 278.8 where it rejoins the proposed route. All factors are identical to that of the M&NP route with the exception of the distance to residences on Highway 132. The alignment of Alternate 2 would move the edge of the 30 metre safety zone off Mr. Bourque's property and 10 metres closer to Mr. Bourque's neighbour.

Views of the Parties

Mr. Bourque's objection related to two issues; the proximity of the pipeline to his residence, and the impact the safety zone would have on his land use, particularly his agricultural activities. Mr. Bourque asserted that the proximity of the pipeline to his residence would cause his family to worry about their safety. Mr. Bourque also stated that being within the safety zone would reduce the value of his property.

Mr. Bourque expressed concern that the safety zone would affect his access to his farmland and his use of machinery such as a fence post auger. In particular, Mr. Bourque was concerned that every time he has to put in a new fence post, for instance, he would have to go to the Company for consent. Also, Mr. Bourque asserted that the pipeline project would cause him to lose two years' worth of crops by not being able to farm a portion of his fields.

M&NP stated that the basis for Mr. Bourque's objection is a matter of compensation. With respect to Mr. Bourque's concern regarding the proximity of the pipeline to his residence, M&NP argued that the primary basis for this concern is the effect the proximity might have on the value of his property.

M&NP also argued that Mr. Bourque's concern of safety would not be addressed by Alternate 2 as it only moves the pipeline marginally north from his residence. M&NP also contended that the safety zone restrictions to land use merely requires permission to be sought before digging or blasting.

M&NP submitted that moving the pipeline as a result of a concern with the safety zone would not be a valid routing criterion.

In Mr. Bourque's view, the alternate routes would alleviate his concerns to some degree. While Alternate 1 would alleviate all his concerns, Alternate 2 would only alleviate his concern of land use restriction related to the safety zone. His safety concern, stated as his primary concern, would still exist if Alternate 2 was selected.

M&NP opposed Alternate 1 because it would go through a subdivided lot. M&NP's concern with Alternate 2 was that it would be unfair to shift the burden to Mr. Bourque's neighbour so that Mr. Bourque would be relieved of the impact of the pipeline altogether.

Views of the Board

The Board is satisfied that M&NP's mitigative measures available to landowners regarding soil reclamation and compensation for loss of income from crop loss will adequately address Mr. Bourque's concern of loss of agricultural productivity due to the pipeline construction. In reaching this view, the Board notes Mr. Bourque did not take issue with or refute any mitigative measures.

With respect to the restrictions placed on Mr. Bourque by the safety zone, the Board is satisfied that normal agricultural practice, such as ploughing, can be maintained. For activities requiring consent from M&NP, such as machine-driven post hole digging, the Board is satisfied, based on the commitments of M&NP, that Mr. Bourque would receive a timely response from the Company. The existence of the safety zone, as discussed in section 3.2, does not impact, in any significant way, on Mr. Bourque's use of the land.

In determining the best possible detailed route, the Board must balance the interests of the objecting landowner with interests of the general public. Based on the evidence presented at the hearing, the Board is of the view that Alternate 1 would impact constraints such as subdivided lots and a gravel pit. The Board is also of the view that Alternate 2 would not resolve Mr. Bourque's concern regarding the proximity of the pipeline to his house.

The proposed route represents an appropriate balance of all relevant factors and, therefore, is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

3.3.7 Gail and William D. MacKenzie

Description of Proposed Route (PPBoR Sheet 17)

M&NP's proposed route would traverse two properties, the first parcel identified as PID 01048214 and the second as PID 00854737, owned by Gail and William MacKenzie ("the MacKenzies") between KP 111.8 and 113.7. These properties are located about 5 km west of Rocklin, in Pictou County, NS. The proposed route would enter the southern boundary of the first parcel in a northerly direction at KP 111.8, traverse the eastern portion of the property along the top of a ridge and exit at its northern boundary. The proposed route would enter the MacKenzies' second property, PID 00854737, in a northwesterly direction at KP 112.7, proceed across a woods road approximately in the middle of the property, and exit the northwest corner of the lot at KP 113.5. The route would continue several hundred metres and cross MacKay Road at KP 113.7. The terrain in the vicinity of the first property is open, unforested land regenerating spruce and fir with steep slopes that drain to the east. The second property contains a mixed age stand of forest that has been selectively cut and clear cut immediately west of the easement, with mostly gentle slopes.

M&NP submitted that the proposed route follows, as closely as possible, a straight line between the upstream and downstream control points. The upstream control point from the MacKenzies' property occurs at KP 111.6, where the route would cross an unnamed tributary to Mill Brook. The control point was chosen for its flat approaches and low stream banks. The downstream control point occurs at KP 113.8 where the route would cross MacKay Road between a steep gully and a residential lot. M&NP stated that a realignment to the east of the proposed route would encounter Mill Brook.

Nature of Objection

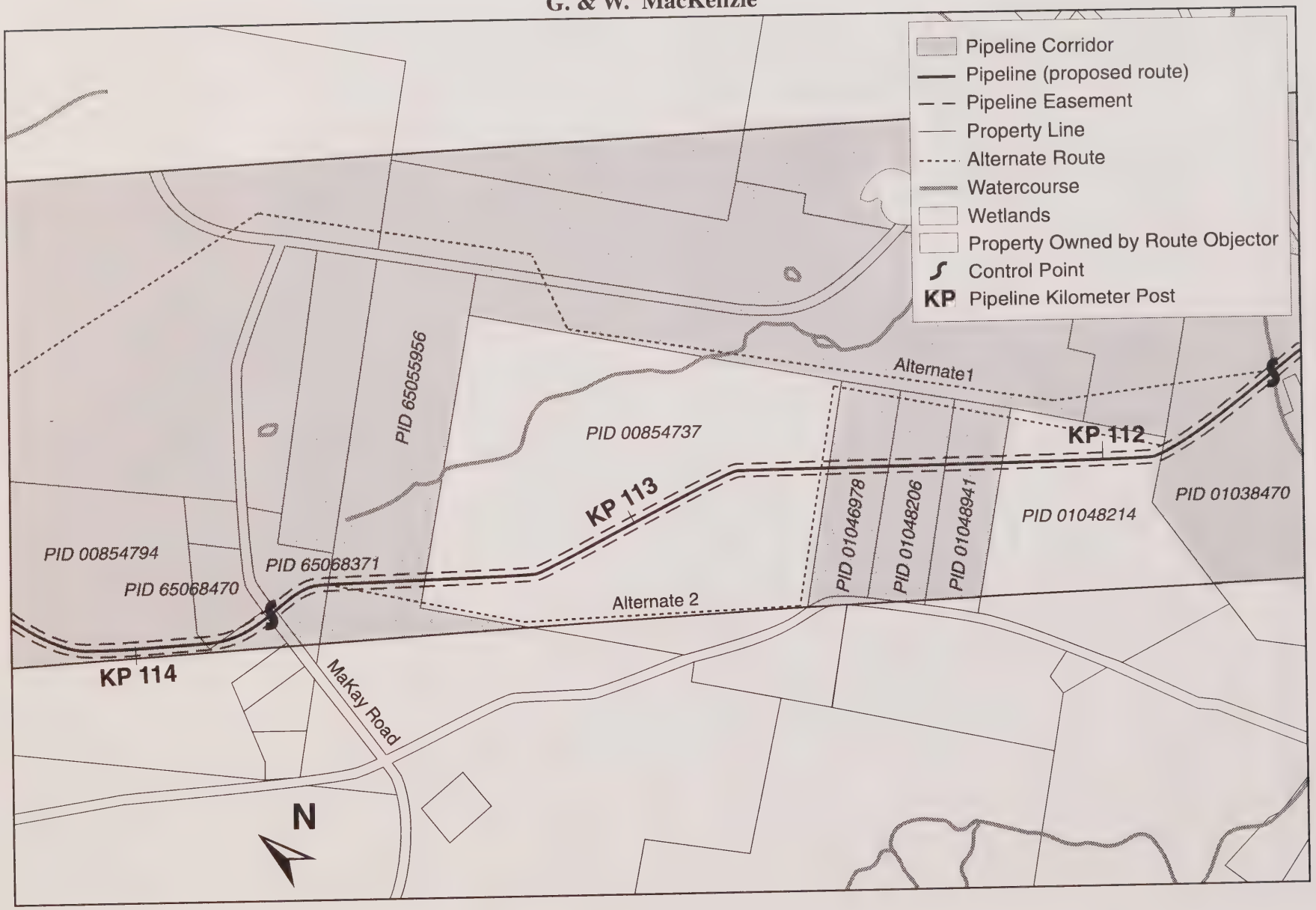
The Mackenzies' objection was based on a concern that the proposed route would impede forestry machinery (e.g. skidder) crossing the pipeline easement on PID 00854737. The MacKenzies further stated that the two crossings proposed to be built to accommodate crossing of the easement might not be sufficient.

Alternate Routes

The Mackenzies provided an alternate route for consideration. Alternate 1 would depart from the proposed route just after the upstream control point at a tributary to Mill Brook at KP 111.6 and would follow a northerly direction to the east of the MacKenzie properties. The alternate route would then cross MacKay Road to the east of PID 00854737, parallel the east side of the road for approximately 500 metres and then angle in a northwesterly direction to rejoin M&NP's proposed route beyond KP 115. The terrain along the alternate route would be similar to that of the proposed route, with more agricultural land and Christmas tree plantations.

A second alternate route was raised at the hearing. Alternate 2 would depart from the proposed route just short of KP 112 on the first MacKenzie property and follow the eastern boundary of that property in a northerly direction and continue along the eastern boundary of the following three building lots. Once Alternate 2 reached the property line of the MacKenzies' second property, it would bend to the west and follow the southern boundary of that property to the edge of the corridor. Alternate 2 would continue north along the bottom of the corridor, leave the Mackenzie property and cross MacKay Road at approximately the same location as the proposed route. The terrain encountered by this alternate route would be similar to the proposed route with the exception that the pipeline along the alternate route would be located farther down some of the side slopes encountered by the proposed route.

Figure 3.3.7
G. & W. MacKenzie



Views of the Parties

The primary issue raised by the Mackenzies was the impact the pipeline would have on their forestry operations; in particular, the restrictions placed on them with respect to crossing the pipeline easement. The proposed route across the MacKenzies' second property runs through the centre of the parcel, limiting access to timber.

M&NP indicated that it has offered to build three permanent crossings on PID 00854737 and one on PID 01048214. As well, the Company has offered the MacKenzies temporary crossings when needed. During cross-examination, M&NP stated that, while regulations require the Company to respond to a crossing proposal within ten days and have the pipeline marked within three days, it would try to respond to this type of request within a three-day turnaround. In assessing "reasonable requests" for crossings, M&NP stated that this would depend on the specific circumstances.

M&NP submitted that one of its guiding principles was to make sure that landowners can continue to harvest their trees, including getting across the pipeline, without being out of pocket for doing so. The Company reiterated its commitment to allow landowners to operate their business as they would have absent the pipeline.

In support of its proposed route, M&NP stated that the proposed route would follow a ridge which slopes down to Mill Brook, rather than aligning along the sideslope or alongside the Brook. M&NP not only takes into consideration the number of affected landowners in determining a route but also the length, the terrain and the impact on Class 1, 2, and 3 constraints. M&NP stated that if it were to avoid the MacKenzie property, the Company would not be treating others in the area in a fair and consistent manner. M&NP admitted that, in this case, the straight line principle was the primary consideration given that there were no serious constraints such as proximity to residences.

The evidence presented on the alternate routes indicated that they do not vary significantly from the proposed route regarding impact on Class 1, 2 or 3 constraints. Alternate 1 would be longer by about 150 metres which would contravene M&NP's primary principle, and would involve new landowners. M&NP admitted Alternate 1 would only affect eight properties while the proposed route would affect 13 properties. M&NP argued that changing the proposed route to align with either of the alternate routes might impact other landowners differently than before and therefore change their position with respect to the pipeline.

Alternate 2 would also be slightly longer than the proposed route. As well, M&NP raised concerns with the amount of side slope area this alternate would traverse, the amount of bending and the acceptance of other landowners of the alternate route.

Views of the Board

The primary concern of the landowners in this case is that of continued access by the MacKenzies to their properties for timber operations. The MacKenzies gain 90 percent of their livelihood from their forestry operation and are, therefore, especially sensitive to obstacles preventing them from working their land. The Board acknowledges that the alternate routes would address this concern of the MacKenzies. However, the Board is satisfied that mitigation through the general and specific commitments made

by M&NP during the course of the proceedings will result in reasonable, timely and continued access by the Mackenzies to their timber.

Any approval of the proposed detailed route should be conditioned on the provision of permanent and temporary crossings as committed to by M&NP during the course of the hearing.

In the Board's view, the proposed route represents an appropriate balance of all relevant factors. Therefore, the Board is satisfied that the route proposed by M&NP is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in the case of Gail and William MacKenzie.

The approval of the detailed route will be subject to the following conditions. Unless the Board otherwise directs, M&NP shall provide permanent and temporary crossings of the right-of-way on the properties owned by the Mackenzies, in locations to be mutually agreed upon by the Company and the landowners, as follows:

(i) for the property identified as PID 00854737, three permanent crossings;

(ii) for the property identified as PID 01048214, one permanent crossing; and

(iii) temporary crossing(s), within 3 days of a reasonable request being made for the crossing(s) by the Mackenzies.

3.3.8 William (Billy) MacDonald

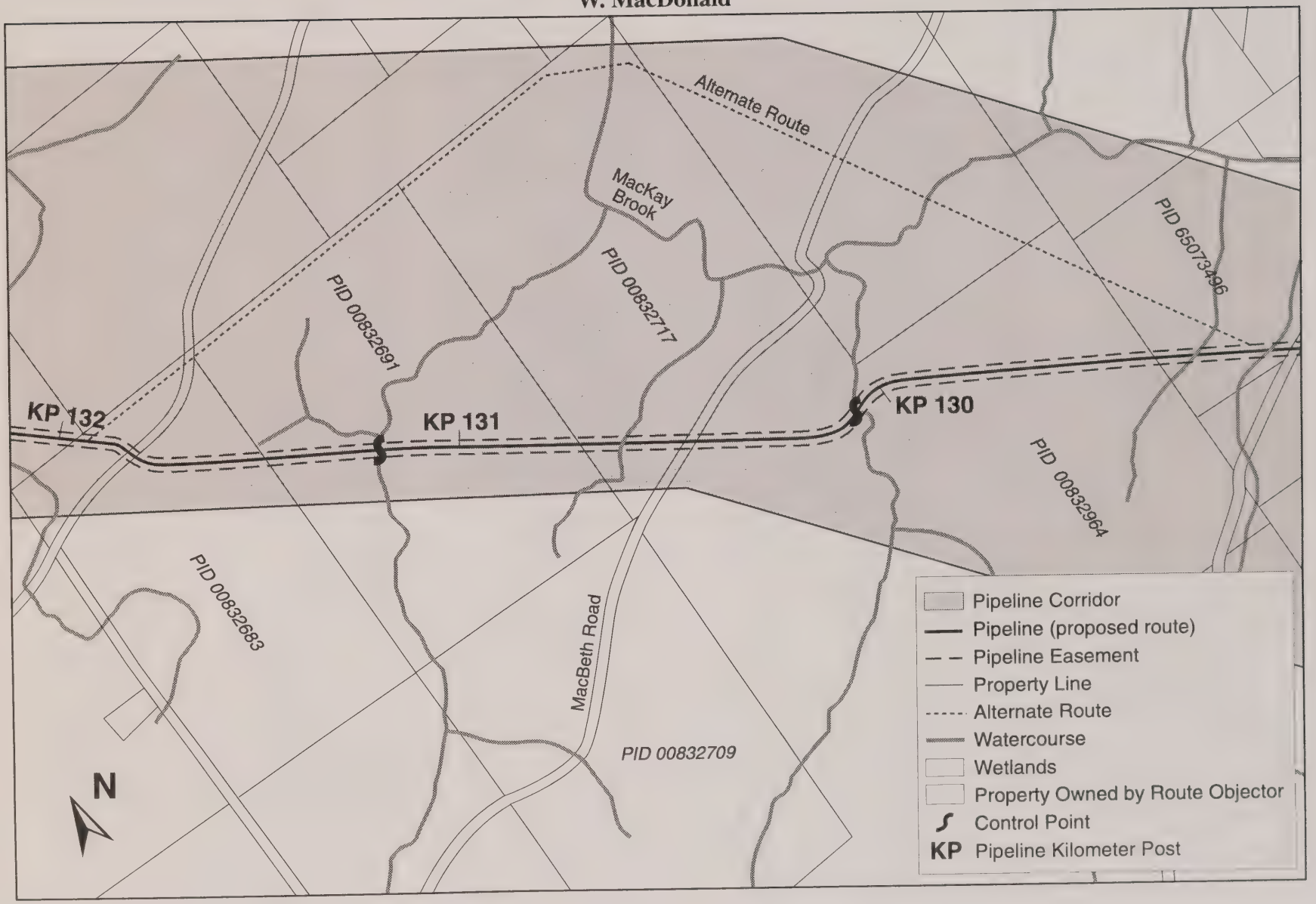
Description of Proposed Route (PPBoR Sheet 20)

Mr. MacDonald's property (PID 00832709) is located in the West Branch River John area in Pictou County, NS. The nearest point of Mr. MacDonald's property is approximately 100 metres from M&NP's approved one km wide corridor and parallel to KP 131.

The route proposed by M&NP would proceed in a westerly direction, crossing a MacKay Brook tributary in a southwesterly direction at KP 130. It would travel west across MacBeth Road at KP 130.5, cross another tributary of the MacKay Brook at approximately KP 130.6, and then cross the MacKay Brook at approximately KP 131.2. The proposed route crosses difficult terrain through forested, cleared and agricultural lands.

The upstream control point is located at KP 130, where the route crosses a MacKay Brook tributary. The downstream control point is located at KP 131.2, where the route crosses the MacKay Brook. M&NP submitted that crossing at these sites offers the best location available within the entire one km corridor in consideration of erosion and sedimentation concerns and the avoidance of steep and extremely high banks along the Brook.

Figure 3.3.8
W. MacDonald



Nature of Objection

Mr. MacDonald owns and operates the Red Tail Nature Awareness Camp (the "RTNAC"). Mr. MacDonald submitted that placement of the pipeline anywhere in the approved one km wide corridor would have a significant adverse effect on, and would fundamentally alter, the character and identity of the RTNAC which could not be compensated for or mitigated.

Alternate Route

Mr. McDonald retained the service of Mr. Alex Ramsay, an environmental consultant, to determine a viable alternate route that would place the pipeline as far away as possible from the camp and lessen its impact to some degree.

Mr. MacDonald submitted an alternate route that would depart from the proposed route at approximately KP 129.1, travelling in a northwesterly direction, across PID 65073496 and the northern corner of PID 00832964. The alternate route would continue in a northwesterly direction crossing a MacKay Brook tributary and MacBeth Road. At the intersection of the pipeline corridor and the northern boundary of PID 00832717, the alternate route would bend in a southwesterly direction and continue along the northern property boundaries of PIDs 00832717, 00832691 and 00832683 until it re-connected with the proposed route at KP 131.8. The alternate route would cross terrain similar to the proposed route.

Views of the Parties

Mr. MacDonald indicated that he uses the land within a 2 km radius around his property for the RTNAC activities. Mr. MacDonald spoke of the importance of silence and undisturbed habitat to the unique nature bonding experience offered by the RTNAC, and stated that activities of the camp are focussed around stillness and quiet, with imagery, sensory and meditation exercises occurring daily. Mr. MacDonald further submitted that the feeling of wildness, and in fact the essence of the RTNAC, would be impacted by a linear pipeline corridor passing through the lands utilized by the camp. Mr. MacDonald indicated that this could not be compensated for or mitigated and that the camp should qualify as a Class 1 constraint.

Aside from short-term construction disturbance, Mr. MacDonald submitted that the on-going operation of the pipeline would pose continuing safety and noise concerns.

Mr. MacDonald also indicated a concern that this pipeline development could lead to a future corridor for other pipelines, although he could tolerate the pipeline following his alternate route even if it became a corridor for other pipelines in the future. However, Mr. MacDonald submitted that, if the route were to proceed as proposed by M&NP, he would not be able to continue the RTNAC activities in the same manner.

Mr. MacDonald stated that, even though he was very vocal in the initial stages of the routing a few years ago, M&NP did not visit him in order to understand the essence or nature of the experience offered at the RTNAC. He was, therefore, of the view that the RTNAC was not given adequate consideration in M&NP's detailed route selection decision.

M&NP indicated that it first became aware of the existence of the RTNAC when Mr. MacDonald gave a presentation at the Public Open Houses/Scoping Sessions held two or three years ago. M&NP admitted that it did not attempt to further consult with Mr. MacDonald until after he filed his objection on 27 May 1998.

M&NP stated that, although it is was aware of the camp, it did not consider it to be a detailed routing criterion due in part to the property's location outside of the corridor. M&NP submitted that the RTNAC might have been considered a Class 2 constraint as "land with recreational value" if it had been within the pipeline corridor.

As part of its normal operation of the pipeline, M&NP stated that it would conduct weekly fixed wing aerial patrols and bi-yearly helicopter fly-overs along the pipeline right-of-way. M&NP also indicated that it would conduct a yearly foot patrol and cathodic protection survey of the pipeline. M&NP stated that it would have to bring in clearing equipment on a five-year cycle to keep the RoW entirely clear of vegetation that could obstruct access to the pipeline. M&NP stated that it would commit to consult with landowners in the area regarding scheduling of the Company's activities to minimize potential conflicts. M&NP would also consider alternate solutions such as temporarily assisting in the relocation of some of the camp activities during construction.

M&NP acknowledged that some of its road crossings in this area would be outside of its guidelines for crossings of 70 to 90 degrees. For example, it proposed to cross the MacBeth Road at a 60 degree angle. M&NP submitted that the criterion of ensuring a 70 to 90 degree angle at all road crossings is a guideline only.

M&NP indicated that the increase in the steepness of the slopes along the alternate route would necessitate a 30 percent increase in the amount of bending that would be required in order to follow the contours of the land. M&NP contended that the alternate would require a 50 percent increase in grade work to make the slopes acceptable and safe for the operation of pipeline equipment, and a 50 percent increase in temporary work room for the storage of material required to be moved in order to lower the grades to an acceptable level. M&NP indicated that the alternate route would be approximately 300 metres longer than the proposed route, increasing the cost by approximately $600,000.

There were two individuals who intervened in the case of Mr. MacDonald. Mr. Ethan Huner spoke about the distinct and special significance of the RTNAC and requested that the detailed route be moved. Mr. David Orton's intervention was based on concerns regarding the unique environmental significance of the RTNAC and urged that it be respected.

Views of the Board

The Board is of the view that M&NP failed to consider the uniqueness and special circumstances of the RTNAC in establishing its proposed detailed route. Nor did M&NP identify potential interactions of the construction and operation of the pipeline with the activities of the RTNAC both on and off Mr. MacDonald's property. Although Mr. MacDonald took part in the public hearings before the Joint Public Review Panel, he was not consulted with respect to the detailed route selection.

Mr. MacDonald's objection is of a unique nature in these proceedings since his land is located outside the approved pipeline corridor. Although the land, which forms the base for Mr. MacDonald's RTNAC, would not be physically impacted by the pipeline, the camp's activities extend beyond the boundaries of his land and into areas that are in close proximity to the proposed route. The evidence showed that this recreation use of lands within the corridor was continuous throughout the year and that the RTNAC was a successful, highly regarded enterprise that would likely continue over the foreseeable future. Thus, in the Board's view, Mr. MacDonald's use of these lands could be adversely affected.

M&NP chose not to consult with Mr. MacDonald prior to selecting its proposed route. Rather, it appears that the Company's approach to Mr. MacDonald's objection was to require the camp to adjust its use of this land to fit the pipeline route. In taking this approach, M&NP ignored one of its own constraints: "recreational use". Had the Company developed its route after consultation with Mr. MacDonald, taking into account this recreational use of land within the corridor, it is possible that an alternate route may have been selected, such as the one proposed by Mr. MacDonald.

The Board is of the view that the Company failed to consider relevant factor in its detailed route selection process. At the same time, the Board notes that significant information is lacking in respect of the alternate route. In these circumstances, the Board is of the view that further information is required before a decision can be made in respect of the proposed detailed route.

Decision

The Board directs M&NP to conduct a detailed evaluation of its proposed route and any other viable alternate route, taking into consideration its routing criteria and Mr. MacDonald's current use of his property and other lands within the pipeline corridor.

The Board further directs M&NP to serve the results of the evaluation on the Board and the parties to the hearing into the MacDonald objection. The Board will establish a procedure for the examination of that information when it is filed.

The Board reserves its decision on the MacDonald objection, pending the filing and examination of that further information.

3.3.9 Kimberley D./Roderick K. Stanley and Sue M. Brander

Description of Proposed Route (PPBoR Sheet 18)

The route proposed by M&NP would cross properties owned by Ms. Sue Brander (PID 00855064) and Mr. and Mrs. Stanley ("the Stanleys") (PID 00968396) between KP 116.2 and KP 116.9. These properties are located in the Limerock area, east of Salt Springs, in Pictou County, NS. Upstream of the properties, the proposed route would follow a northerly alignment as it approaches and crosses Highway 104 (under construction) at KP 116.1. The alignment would then cross the Brander and Stanley properties, respectively, before crossing Tanner Hill Road at KP 116.9. The proposed route would proceed in a northwesterly direction and cross the West River East Side Road at KP 117.3. At KP 117.7, the route would bend in a westerly direction to cross the West River of Pictou. On the subject properties, the route crosses forested, cleared and agricultural lands.

The upstream control point is located at KP 116.1 where the proposed route would cross Highway 104. The Highway 104 control point was selected in an area where the elevation of the terrain on either side of the highway is very close to the elevation of the finished highway grade. M&NP indicated that it chose the best possible location within the corridor to facilitate the boring operation for the highway crossing and reduce the required depth of the bore base on either side of the highway. The downstream control point is located at KP 117.7 where the route would cross the West River of Pictou. M&NP indicated that this crossing location was selected because it had good bank stability and substrate material for construction. The proposed alignment would follow level ground from Highway 104 to the control point at the West River of Pictou.

Nature of Objection

Ms. Brander opposed the proposed route because she believed that it would be unsafe to live near a gas pipeline.

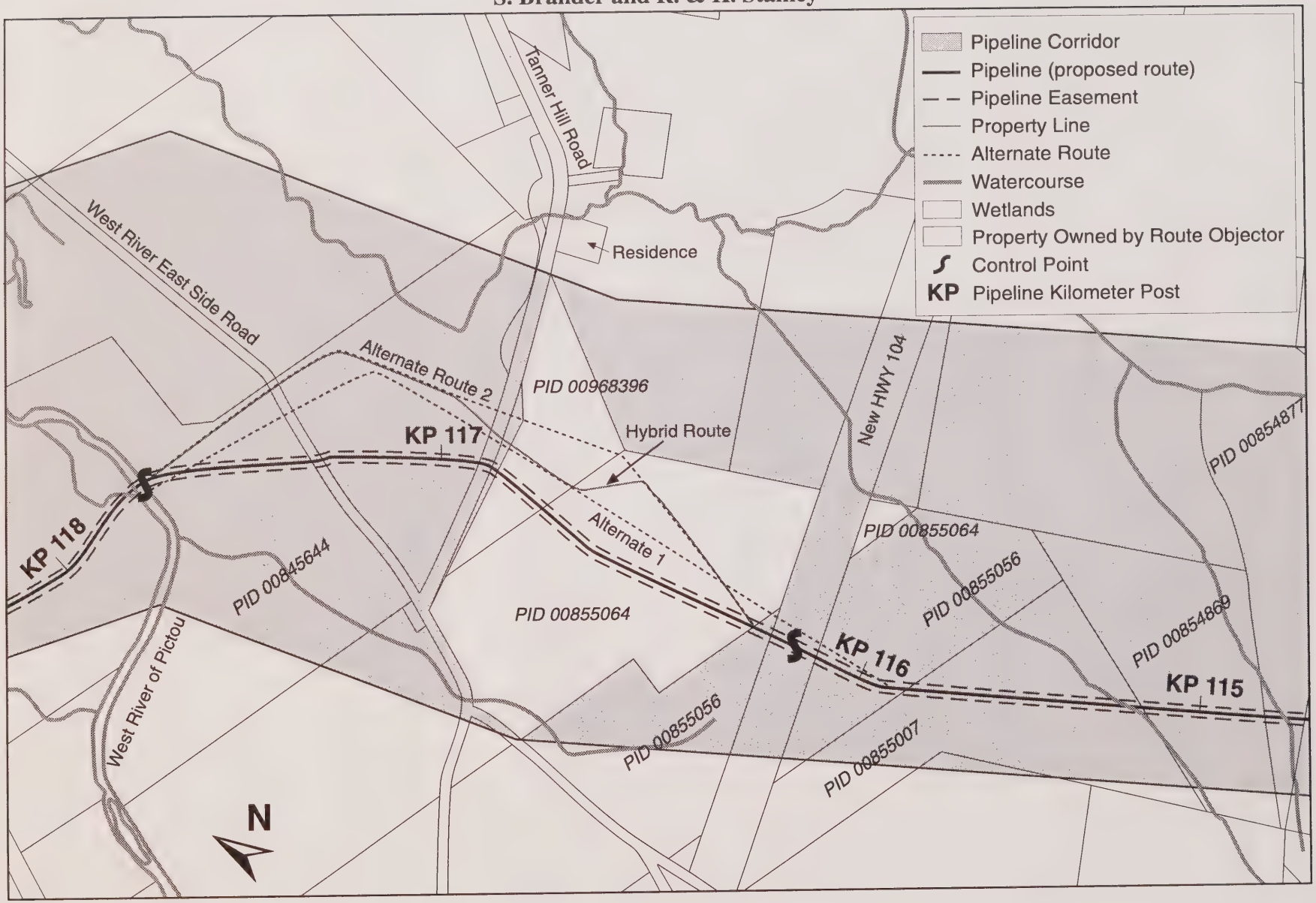
The Stanleys opposed the location of the detailed route due to its close proximity to their residence and the resulting disruption of their home property. The Stanleys' property is wooded and has a stand of old pine trees which made the property attractive to the Stanleys as a place to settle and raise their children.

Alternate Routes

The Stanleys provided an alternate route for consideration. Alternate 1 would depart from the proposed route at KP 115.9, travel in a northeast direction, and cross Highway 104. Alternate 1 would traverse the Stanleys' property east if the proposed route. The alignment would bend in a northwest direction at the Tanner Hill Road, cross West River East Side Road and re-connect with the proposed route at KP 117.7 just before crossing the West River of Pictou.

M&NP indicated that the alternate route proposed by the Stanleys was very similar to an alternate route that M&NP previously proposed to some of the landowners in the area (Alternate 2). Alternate 2 would deviate from the proposed route shortly after the control point at Highway 104. The alignment would then proceed to the northeast corner of the Brander property, where it intersects with the Stanley property. Alternate 2 would then proceed across Tanner Hill Road, avoiding a gully to the east located on property owned by Mr. MacLean (PID 00845644). Alternate 2 would continue in a northerly direction to the property boundary of PID 00845644, then bend in a westerly direction to cross the West River East Side Road and align itself for a right angle crossing of the West River of Pictou. M&NP indicated that Alternate 2 had not been acceptable to all the landowners in the area and, therefore, was not acceptable to the Company.

Figure 3.3.9
S. Brander and R. & K. Stanley



During the hearing, M&NP proposed a "hybrid" route as a compromise that combined M&NP's alternate route with the portion of the Stanleys alternate route traversing PID 00968396. M&NP proposed that, starting at the southern boundary of the Brander property (PID 00855064), Alternate 2 would be followed to the point where it would intersect with the Stanleys alternate route (at the boundary of the Stanley property, PID 00968396). M&NP would then follow the route of Alternate 1 across the Stanley property to the Tanner Hill Road. The "hybrid" route would cross the Tanner Hill Road at an angle between 70 and 90 degrees and would then realign with Alternate 2.

Views of the Parties

The Stanleys

The Stanleys' plans for their property include building a house adjacent to the woods, in the same general area as their present trailer, and developing the adjacent wooded area with trails for their growing family to use as a recreational area. The Stanleys stated that the proposed route would cross through an area where they planned to build skating ponds for their children and that it would affect a limited number of what they consider to be old growth trees. The Stanleys also expressed concern that if a easement was cut as proposed it would destroy their privacy and open up their yard to the roadway, indicating that the proposed route falls within 75 metres of their doorstep.

The Stanleys submitted that they had discussed relocation with M&NP as an alternative to living beside the pipeline but were told that the Company did not relocate landowners in cases such as this. M&NP stated that it would only entertain relocation in situations where the impact of an easement on a small property is so great that a complete property purchase would be appropriate.

The Stanleys submitted that Alternate 1 would double the distance from the proposed route to their residence and would split their 550 metres of road frontage and property more equally. It would have less bends than the proposed route and would not affect any additional landowners. As well, the Stanleys stated that Alternate 1 would allow them to build their house where they intended, preserve the privacy of their yard, make their children's immediate play area more secure, avoid two small stands of old forest and preserve the value of their road frontage for building in the future.

Alternative 2 was not attractive to the Stanleys as the route would not avoid a stand of old pine trees they wish to preserve.

M&NP indicated that it had some concerns with Alternate 1. M&NP indicated that the Nova Scotia Department of Transportation had already approved the crossing location and angle of Highway 104. M&NP further indicated that Alternate 1 would cross through a five metre deep cut in the highway embankment which would be a less preferable location for boring that crossing. However, M&NP admitted that the conditions of the proposed route and Alternate 1 were very similar and indicated that, from engineering, environmental and lands perspectives, the Stanleys' alternate route would be acceptable to it. At this point, M&NP suggested the "hybrid" route that was acceptable to the Stanleys.

Ms. Brander

Ms. Brander stated that she did not want the pipeline to cross her property due to safety concerns and resale potential. With respect to an alternate route, Ms. Brander indicated that she did not care where the pipeline was routed as long as it did not cross her property.

Views of the Board

The Board notes that the route originally proposed by M&NP came within close proximity to the Stanleys' home and would have impacted significantly on the landowners' use of the land. The Board also notes that the alternate route proposed by M&NP (Alternate 2) would have gone through a stand of trees that are of value to the landowner. The Board recognizes that Alternate 1 would avoid the Stanleys' stand of trees and would be equal to M&NP's proposed route in terms of routing selection criteria.

Although Ms. Brander opposed having the pipeline route traverse her land, she did not oppose the alternate route proposed by the Stanleys. In view of the general nature of Ms. Brander's safety concerns, the Board is not persuaded that a realignment around Ms. Brander's property would be warranted.

During the hearing, M&NP and the Stanleys agreed that the "hybrid" route would be mutually acceptable. The "hybrid" route would be consistent with M&NP's routing criteria. The Board is satisfied on the evidence that the "hybrid" route as described by M&NP is superior to the applied-for route by M&NP and the other alternate routes presented during the course of the proceedings.

Decision

The Board finds that the "hybrid" route as proposed by M&NP and agreed to by the Stanleys during the course of the hearing is the best possible detailed route over the lands owned by the Stanleys and Ms. Sue Brander. The Board therefore denies approval of the applied-for route of M&NP and directs M&NP to file an amended PPBOR for the "hybrid" route.

3.3.10 Glenn H. McNutt

Description of Proposed Route (PPBoR Sheet 23)

M&NP's proposed route would traverse a property (PID 20027462) belonging to Mr. Glenn McNutt. This property is located approximately seven km southeast of Tatamagouche, in Colchester County, NS. The proposed route would approach Mr. McNutt's property in a northwest direction and intersect the southern boundary line at KP 151.6. The proposed route would then continue diagonally across the property where it would exit at approximately KP 152. The terrain of the area is forested, partially cut with uncultivated or native wild blueberries present.

The upstream control point from Mr. McNutt's property occurs at KP 150.6 where the route would cross Black River at a point where less severe banks are encountered. A wetland spans across the corridor to the north of the route in this area. The downstream control point occurs at KP 153.8 where the route would cross the Waughs River at a point where a straight river run and stable bank conditions exist. Steep banks and a series of wetlands exist to the south of this control point.

Nature of Objection

Mr. McNutt's objection was based on concerns that the proposed route would go through an area of his property where a preliminary subdivision plan had been approved.

Alternate Route

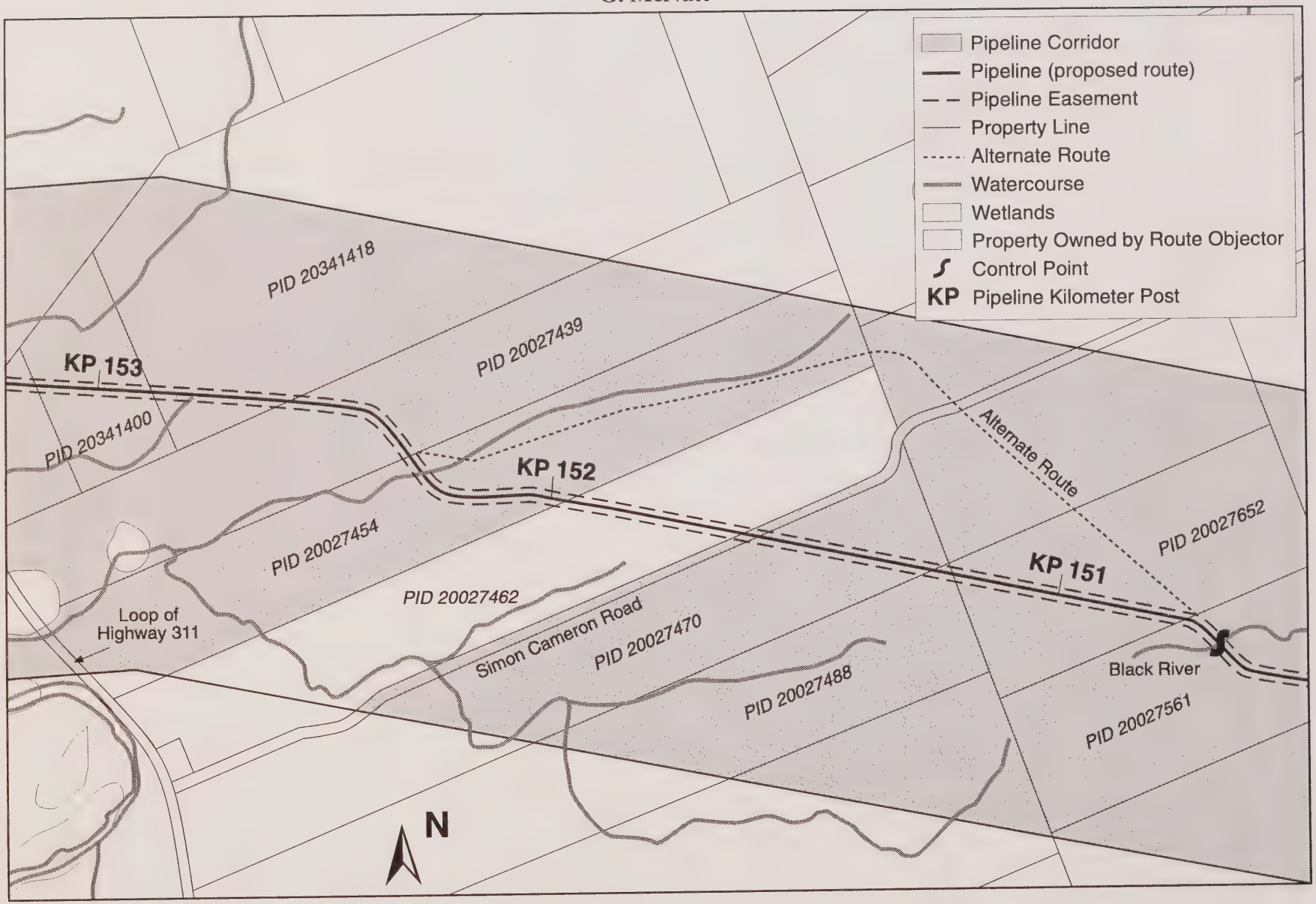
Mr. McNutt's alternate route would diverge from the proposed route just after the upstream control point, at KP 150.7. It would then travel in a northwest direction across Simon Cameron Road, avoiding Mr. McNutt's property to the west, before bending westward to parallel a stream north of the McNutt property for a few hundred metres. The alternate route would then cross the stream before rejoining the proposed route at KP 152.3. The terrain would consist of mostly previously cut woods with regeneration age from 5 to 15 years.

Views of the Parties

Mr. McNutt felt his concerns were not being addressed seriously by M&NP in compensation negotiations and that is why he proposed his alternate route. Mr. McNutt stated that, while his issue was monetary at first, he had not the time nor the money to pursue his concern any further and that the alternate route was the best solution.

Mr. McNutt indicated that his biggest concern with the proposed route was the angle at which the proposed route would cross his lots. The proposed route would be going through three of his six lots. As a compromise to his alternate route, Mr. McNutt suggested that the Company go straight across his property as opposed to on an angle. Mr. McNutt was also concerned with the potential impact the route would have on his road frontage. As a result of the contour of the land on the eastern portion of Mr. McNutt's property, there would be no access from Simon Cameron Road onto his property east of where the Black River crosses the road. Of the 121 metres of frontage on his lots, Mr. McNutt asserted that the pipeline easement and safety zone would take up 85 metres.

Figure 3.3.10
G. McNutt



The proposed route would traverse a cultivated blueberry field north of Mr. McNutt's property at KP 152.4 . However, M&NP stated that where cultivated fields were unavoidable, as in this case, the route would follow the edge of the field.

M&NP argued that the issue of subdivision in this case is clearly a matter of compensation. The Company stated that it was only recently, when Mr. McNutt's expectations for compensation were not being met, that he said he would challenge the routing. Regarding Mr. McNutt's subdivision plans, M&NP noted that his lots are four or five acres in size. Because M&NP considered these to be very large lots, and based on past experience where subdivisions are successfully developed around pipeline RoW, M&NP considered the lots to be compatible with the pipeline. M&NP submitted that subdivision plans could be revised to integrate lots with the pipeline's RoW.

M&NP pointed out that the alternate route would parallel an unnamed stream at KP 152 which was undesirable due in part to the required restoration of the terrain. The alternate route would also be approximately 150 metres longer than the proposed route.

Views of the Board

The Board is of the view that the concern of Mr. McNutt, that the proposed route would impact adversely on his subdivision plans, is a matter of compensation. There is no evidence to suggest that the proposed route for the pipeline would render future subdivision plans impossible. In the view of the Board, the landowner's concern regarding the effects on his subdivision plans does not extend beyond a compensable issue to any significant degree. The Board notes that subdivisions can be designed taking into account pipelines and further notes M&NP's willingness to work with landowners in order to facilitate future development.

The Board is of the view that the relevant factors were applied and weighted in an appropriate manner in this case. In addition, the Board is satisfied that the mitigation measures discussed in the evidence would address Mr. McNutt's concerns to the extent that they are not matters of compensation. Therefore, the Board is satisfied that the route proposed by M&NP is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

3.3.11 Adrian Piek

Description of Proposed Route (PPBoR Sheet 14)

The route proposed by M&NP would cross the Elgin Road and pass to the north of the 0.41 hectare property (PID 01048719) owned by Mr. Adrian Piek. This property fronts on the west side of the Elgin Road, near the Town of Elgin in Pictou County, NS. The proposed RoW itself would not lie within any portion of Mr. Piek's property. The 30 metre safety zone would, however, overlap a portion of the property along its northwestern edge.

The proposed route would form a relatively straight line, between two control points located to the west and east of Mr. Piek's property, and on opposite sides of the Elgin Road. To the west of Mr. Piek's property, the main channel and several tributaries of the West Branch East River span the width of the one km wide corridor and therefore could not be avoided. M&NP stated that the crossing location of this watercourse, at KP 96.4 was a control point selected based upon fish habitat and constructability concerns. To the east of Mr. Piek's property, M&NP defined the upstream control point as a location rather than a specific feature. M&NP stated that the selection of the specific control point was done by default, and was chosen at the intersection of the alignment of the RoW extended from either direction.

Nature of Objection

Mr. Piek stated that his property was a minimal building lot for the country area which could not easily accommodate any restrictions to its use. He was concerned, therefore, about the proximity of the pipeline and the impingement of the safety zone on the property.

Alternate Route

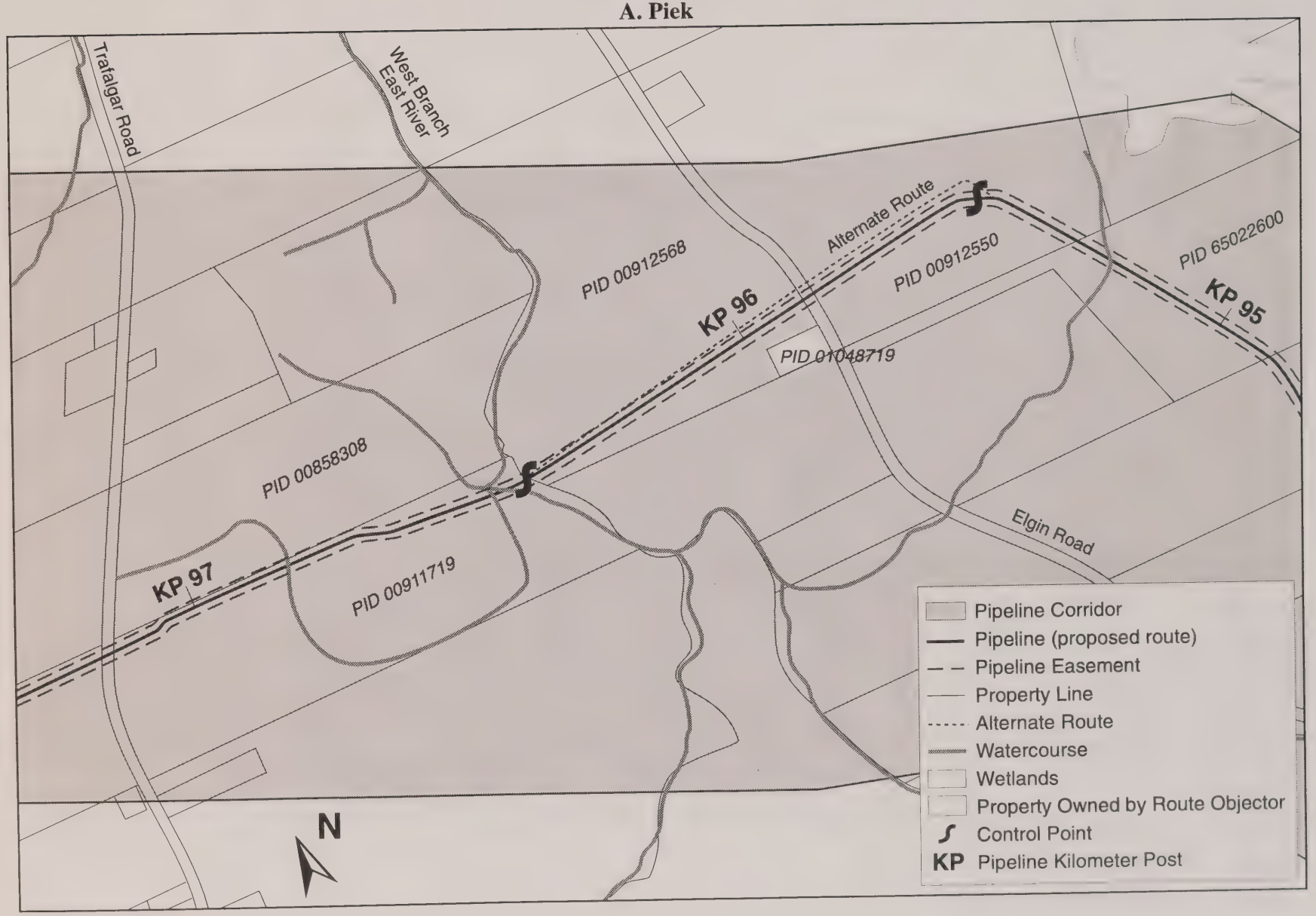
No alternate route was formally proposed, although discussion of moving the upstream control point north of its proposed position by six metres took place during the hearing.

Views of the Parties

Mr. Piek stated that he currently has unrestricted use of his property, compared to what he would have after the installation of the pipeline when he would require permission from M&NP to undertake certain activities. Mr. Piek stated that, simply by the application of the requirement to request permission, he would be affected by the proposed route and that it would represent a limitation put on his property. Mr. Piek believes this restriction on otherwise freehold land would have a negative effect on the value and use of the land.

M&NP stated that no buildings currently exist on Mr. Piek's lot and that the dimensions of the lot were approximately a 50 metre frontage on the Elgin Road by a 90 metre depth. M&NP also stated that the safety zone would affect a 6 metre by 57 metre triangular wedge in the northwest corner of the property representing approximately 4 percent of the lot area.

Figure 3.3.11
A. Piek



M&NP justified the location of the control point on the West Branch East River based upon environmental and engineering considerations. With regard to the location of the control point on the east side of the Elgin Road, M&NP stated that it was established during the fall of 1996. Had moving this control point been considered in 1996, it might have moved the proposed route so as to avoid the overlap of the safety zone on Mr. Piek's property. However, since 1996, there has been no compelling reason, from a detailed routing point of view, to move it. M&NP further stated that moving the control point would require a rationale that was not supported by its route selection criteria. M&NP also stated that it was concerned about the impact on other landowners and the precedent of changing the route because of an objection regarding the safety zone. The distance the control point would have to be moved to address Mr. Piek's objection is approximately six metres.

Ms. Elizabeth Albertini intervened in the case of Mr. Piek. Ms. Albertini's concern was based on potential limitations on property rights and the potential decrease in value due to the safety zone.

Views of the Board

A portion of Mr. Piek's property is located within the 30 metre safety zone for the proposed route. His objection is based on the inconvenience of having to seek permission to carry out certain activities in this area, as required pursuant to section 112 of the Act.

During route selection, M&NP, following its routing criteria, did not consult with landowners who would be affected by the safety zone, including Mr. Piek. In this case, the Company did take into account the factors relevant to the route selection. The question to be considered is whether the Company ought to have changed the route due to the impacts on Mr. Piek. As discussed in section 3.2(b) of these Reasons for Decision, a pipeline company holds no property interest within the safety zone and landowners may continue to carry out usual activities, subject to obtaining the consent of the pipeline company or the Board. The concerns of Mr. Piek do not extend beyond this minimum inconvenience. In the view of the Board, there is no requirement to relocate the pipeline route to accomodate the concerns of Mr. Piek.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

Dissenting Opinion of C. M. Ozirny

Mr. Piek takes objection to the proposed detail route, because the safety zone encroaches on his property, requiring him to seek the Company's approval prior to initiating certain activities on the property. This causes a change in status, and a restriction on the use of this property, which would not have occurred but for the presence of the pipeline.

It is clear that the Company ignored the impact of the safety zone on Mr. Piek's land because it felt that the inconvenience to him was insignificant. It is equally clear that an extremely minor deviation (of approximately 6 metres) to the north would not have had any negative effects on the cost or efficiency of the pipeline, and that none of the Company's routing criteria would have been compromised in the least.

Despite initial reluctance to admit any impact on Mr. Piek and his property, the Company's representative, Mr. Waldon, eventually conceded that, "I can agree that there is a change for you, yes."

The issue of how M&NP selected the control point immediately to the east of Mr. Piek's property is key. The Company presented the following evidence with respect to the selection of this control point:

> "It's not really at a feature, as many of the other control points determined for this project have been."
>
> "So the control point is more the intersection of the pipeline alignment, taking into consideration a number of routing constraints."
>
> "The establishment of this control point, in some respects was... the best way to describe it might be default."
>
> "..., the control point was more the intersection between two alignments, as opposed to having chosen the control point and then aligning to it."
>
> "It was kind of by default, in that we had two alignments, and the control point was where these two met."

The Company further conceded that the pipeline tended to align with the control point immediately to the west in a "more or less straight line," suggesting that the pipeline need not necessarily run in a straight line, thereby allowing for a minor deviation.

This uncontradicted evidence, clearly speaks to the arbitrary nature of the selection of this control point. This selection "by default" contravenes the Company's expressed criteria for selecting control points as set forth in Exhibit B-76, pages 16 to 18, entitled "Detailed Routing Process." As such, the integrity of M&NP's route selection process is seriously called into question.

Further, there is no evidence to suggest that M&NP attempted to resolve Mr. Piek's routing objection by consultation, or discussion of any kind, in contravention of paragraph 35, page 18 of Exhibit B-76 which states:

> "M&NP made efforts to consult with landowners filing objections to the proposed detailed route in an attempt to resolve routing objections. In an attempt to treat all those affected by the pipeline RoW fairly and impartially, M&NP has made reasonable efforts to resolve individual

> objections in such a way that does not to comprise the integrity of its detailed route selection criteria. This approach, while applied successfully by M&NP in many instances, has not lead to a resolution of the outstanding objections."

Full and frank consultation between the Company and the objecting landowner is fundamental to any successful detailed routing process. Unfortunately, evidence of such consultation is notable by its absence in this case.

It is also significant to note that the Company further conceded that:

> "If we had looked at this two years ago, we might have moved it to that location and **there would not have been a considerable difference to the routing that we have now**." (emphasis mine)

This statement raises the question, how is time relevant? If the deviation would not have represented a "considerable difference to the routing" two years ago, then how could it be otherwise now?

Two reasons were given by M&NP for not incorporating the deviation required to accommodate Mr. Piek into their detailed route. First, the detailed route was already established, and, in the Company's view, it would not be changed in the absence of a compelling reason. Second, the Company suggested that Mr. Elmer MacKay, who owned the land which the pipeline crossed in the vicinity of Mr. Piek's land, might take objection to this minor re-routing.

Dealing with the first concern, one might well question whether there was any compelling reason for not changing the route. The Company was questioned regarding cost implications and other negative impacts of the requested re-route, but no evidence was presented in this regard. Accordingly, there is no evidence of any adverse impacts resulting from accommodating the deviation.

The Company appears to be under the misapprehension that the landowner has an onus to provide a compelling reason to change the proposed detailed route. On the contrary, the onus is on the Company to convince the Board that the detailed route which they propose is the best possible route.

The Company also expressed concern about setting an undesirable precedent, if Mr. Piek's objection were addressed by re-routing the pipeline to avoid having the safety zone encroach on his property.

In cases where the Company's routing criteria are not compromised, and where there are no financial implications or economic disadvantages to the Company or any other party, the pipeline should always be routed so as to respect a landowner's use and enjoyment of his real property. Observing such a logical principle holds no potential for setting a dangerous precedent. In this case Mr. Piek acquired his property far in advance of the proposed pipeline, and as such, he should not be inconvenienced by the project.

In cases where a re-route would result in the compromise of routing criteria, or in unreasonably higher construction costs, the Company may well have an argument, and the result may well be different.

It is worth noting that the original corridor, submitted on constraint map No. 7 (dated September 30, 1996, and filed as part of Addendum 1 to the EIA) was located 2.5 kilometres south of the existing corridor, avoiding Mr. Piek's property altogether. The corridor was re-aligned in this area during the GH-6-97 Hearing on March 14, 1997.

The potential for causing inconvenience to a landowner, in the use of his land, should always be a relevant factor in determining the best possible detailed route. Given the circumstances of this case, avoiding inconvenience to Mr. Piek should have been a paramount consideration of the Company.

The Company also raised concern about the potential effect of the deviation on Mr. Elmer MacKay who owns the land upon which the re-route would take place. The Company concedes that it has never approached Mr. MacKay in this regard to obtain his response. M&NP merely "anticipated" that there would be some difficulty in obtaining his consent to the re-route. The Company concedes that it drew an inference concerning what Mr. MacKay's response might be. Speculation and inference do not constitute evidence. Accordingly, the Company's concern in this regard is devoid of merit, and is unsupported by the evidence.

In my respectful view there were other factors in this case which were worthy of greater consideration:

1) the balance of inconvenience and disadvantage to Mr. Piek, by denying his request, far outweighed any potential inconvenience or disadvantage to the Company. In fact, the evidence clearly discloses that no inconvenience or disadvantage would be experienced by the Company in the event of a reroute.

2) the relative practical impact of the safety zone encroachment on the small parcel of land belonging to Mr. Piek is significantly greater than the same encroachment on a larger parcel of land.

3) the principle of fairness and equity with respect to a landowner's unrestricted use and enjoyment of land must always be a major consideration.

In his closing argument, counsel for M&NP urged the Board to accept that "it would be the position of Maritimes & Northeast Pipeline that its principles are based on fairness." This comment would appear to ring hollow, given the Company's cavalier disregard for Mr. Piek's rights and privileges as a landowner.

For these reasons, I respectfully dissent from the majority view of my colleagues in the case of Mr. Piek, and hold that the detailed route proposed by the M&NP is not the best possible route for the pipeline.

3.3.12 Shelagh Lynch

Description of Proposed Route (PPBoR Sheet 20)

The route proposed by M&NP would cross two properties owned by Ms. Shelagh Lynch, the first parcel identified as PID 00829796 and the second as PID 00829846, between KP 134.7 and 136.0. These properties are located on the north side of the Scotsburn Road in Pictou County, NS. The proposed route would cross Scotsburn Road from the east and cross the southern boundary of Ms. Lynch's first parcel at KP 135.1. The proposed route would transect the southwest corner of the first parcel and enter the second parcel at approximately KP 135.3. The route would continue westward through the southern third of the second parcel, paralleling a potential wetland at about KP 135.5, and exit the property at KP 136. On Ms. Lynch's properties, the RoW is comprised of agricultural and forested land.

The control point to the east of the subject properties is located at the crossing of the Scotsburn Road, and was selected to avoid residential housing. The downstream control point is located at the crossing of the West Branch Road, 1.1 km west of PID 00829846 and was selected to avoid several gravel pits. The northern one-third of the corridor lies within an area identified as having shallow, potentially non-ripable bedrock, a Class 3 constraint.

M&NP stated that two equally acceptable routes based on its detailed routing criteria lie within the one km wide corridor, both of which would cross Ms. Lynch's property. The Company testified that the original proposed route was changed to the current proposed route during the summer of 1997 to address the concerns of Ms. Lynch and her neighbours.

Nature of Objection

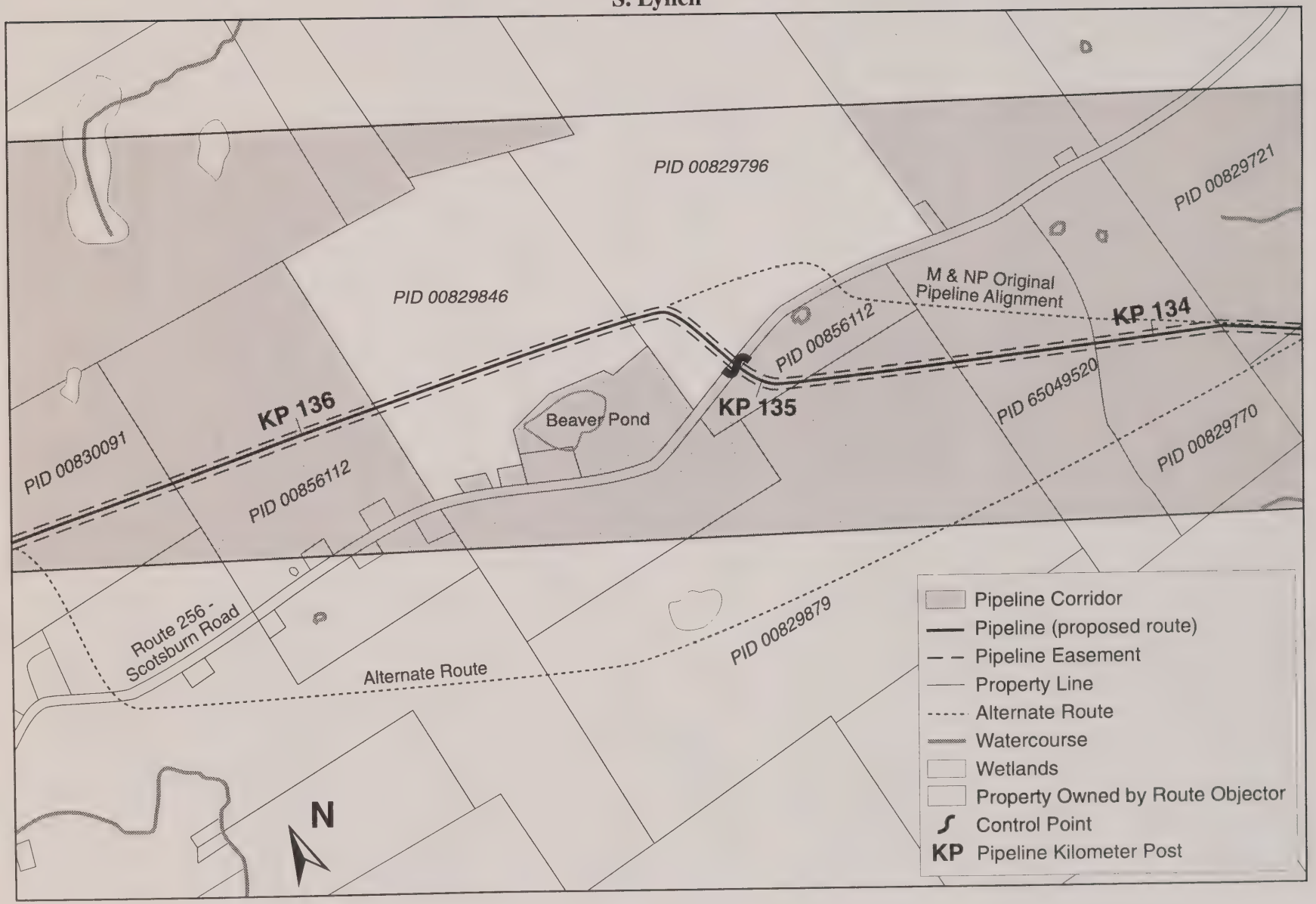
Ms. Lynch objected to the proposed route on the basis that it would fundamentally alter the nature and character of her "Century Farm", it would destroy significant wetland habitat, and that it would ruin the remaining wooded area of the farm used by her family and friends for recreational activities.

Intervenors Ms. Catherine Hughes and Ms. Jane Morrigan own the property directly south of PID 00829846, which also fronts on the Scotsburn Road. Ms. Hughes and Ms. Morrigan stated that their primary objection to the route of the pipeline related to its proximity to a wetland associated with a beaver pond which lies near the northern edge of their property and may extend onto Ms. Lynch's property PID 00829846.

Alternate Route

Ms. Lynch retained the services of Mr. Alex Ramsay, an environmental consultant, to determine a viable alternate route. The route proposed by Ms. Lynch would diverge from the M&NP proposed route near KP 133.5, approximately 1.6 km prior to the proposed crossing of the Scotsburn Road. The alternate route would travel in a westerly direction for approximately 1.9 km, then swing northwest to cross the Scotsburn Road approximately 500 metres prior to its intersection with the West Branch Road. The alternate route would then continue north to re-join M&NP's proposed route on PID 00830091, approximately 900 metres west of the Lynch properties.

Figure 3.3.12
S. Lynch



Approximately 2.4 km of the alternate route would lie outside of the one km wide approved corridor at a maximum distance of 350 metres from the corridor's southern limit. A ruling by the Board, with respect to alternate routes deviating outside the approved one km corridor, was made during Ms. Lynch's hearing, and is set out in Section 1.5.

Views of the Parties

Ms. Lynch stated that the presence of a pipeline on the property of the "Century Farm" would destroy its identity, integrity and historical value and that this effect would not be mitigable. She submitted that her farm has historic significance to the community. Ms. Lynch admitted that the farm is not formally designated as a heritage property by either the municipality or Province and that she has not undertaken to have the farm so designated.

Both Ms. Lynch and Ms. Morrigan stated that they were concerned that disturbance caused by the construction of the pipeline would cause beavers to abandon a pond enjoyed by both property owners, with the resultant loss of the pond habitat and the species of wildlife dependent upon that pond. Ms. Lynch argued that M&NP could not ensure that the pond ecosystem would not be destroyed as a result of the construction of the pipeline and that M&NP would have difficulty mitigating long-term effects to the pond.

Ms. Hughes stated that the beaver pond was used by a variety of species of birds and mammals. Ms. Morrigan stated that the pond is an important feature in the local community, being used by themselves, friends and neighbours for recreational, and potentially educational, activities.

Ms. Hughes stated that she and Ms. Morrigan were concerned about the possible contamination of water due to fuel and oil leaks and due to the epoxy resin coating on the pipe. Ms. Hughes also stated that she was concerned about the potential for pipeline rupture.

M&NP indicated that beaver ponds are very common on RoWs and that the existence of a beaver pond on or near the RoW should not in any way affect the beavers. The construction of the pipeline is unlikely to result in the abandonment of the wetland by the beavers. M&NP stated that the factors influencing the presence of beavers were water source and food supply and that beavers are resilient to disturbance. Direct management of the beaver pond by local residents would be agreeable to the Company.

M&NP stated that the identification of wetlands during the constraint mapping exercise for the corridor selection was based upon existing 1988 and 1991 mapping carried out by Environment Canada and provincial Forest Development Survey Maps. M&NP stated that it was required by the Province to carry out a Wetland Functional Analysis during the detailed routing only for these wetlands. The beaver pond on the Hughes/Morrigan property was not identified as a wetland during the corridor selection process or on the 1:10,000 scale EPP mapping.

M&NP said that, if it had mapped the beaver pond as a wetland, it would have treated it as a Valued Ecosystem Component and would have done everything possible to stay 30 metres way from the wetland proper. In addition, M&NP stated that when wetlands were involved, there would be no net loss of wetland function as a result of pipeline construction.

The definition of wetland provided in the Environmental Impact Statement ("EIS") is based upon the presence of poorly drained soils, hydrophytic plants and the presence of shallow water for some time during the growing season. M&NP stated that if these three elements were found at the beaver pond, it would consider it to be a wetland. M&NP estimated the distance between the RoW and the edge of the wetland to be approximately 40 metre while Mr. Ramsay estimated the distance to be 25 metres. The actual wetland boundary has not been accurately determined to date and, due to the dynamic nature of beaver pond areas, this distance may change over time.

With respect to the alternate route proposed by Ms. Lynch, M&NP stated that a route outside of the one km wide corridor, would only be considered if there were no acceptable locations within the corridor from an overall engineering, environmental and lands perspective.

M&NP argued that the subject properties span approximately 90% of the width of the one km wide corridor and that the remaining portion of corridor is dominated by residential lots along the Scotsburn Road. Mr. Ramsay stated that he did not consider alternate routes, within the one km wide corridor, to the north of M&NP's original proposed route. Ms. Lynch argued that the alternate put forward by Mr. Ramsay was selected to avoid the sensitive wetland area. M&NP argued that it appeared that the alternate route was chosen primarily to avoid the Lynch properties.

Views of the Board

The concerns expressed by Ms. Lynch and intervenors in this proceeding related to their ability to continue to use and enjoy their lands in the presence of the pipeline along the proposed route. More specifically, these concerns fall into two categories: the impacts on the continued ability of Ms. Lynch and her family to operate and enjoy her farm and woodlot; and the impacts on the beaver pond in the area.

With respect to the continuation of Ms. Lynch's farming-related activities, the Board is of the view that, with an approval of the proposed route:

- the operation of the century farm would likely not be impeded following construction of the pipeline, and any short-term changes in production may be dealt with through compensation;
- the presence of the pipeline would likely not affect the nature or integrity of the farm's heritage value; and
- while construction of the pipeline will have a temporary effect on the use of the woodlot, the actual existence of the pipeline will not impede its use or reduce its value as a recreational area.

The Board recognizes the value placed on the beaver pond by the local residents in terms of recreation, natural ecosystem and education and the concern of the residents of the area that pipeline construction and operation may cause the beavers to relocate away from the area. The Board is persuaded on the evidence that the long term residency of the beavers in the pond is not likely to be affected by the pipeline or presence of the right-of-way.

The evidence presented by M&NP was that the beaver pond and flooded area have not been assessed to determine if they meet the definition of wetland as presented in the EIA or to determine their exact location. The Board is concerned that M&NP did not identify the presence of the beaver pond directly adjacent to their proposed route during the route selection process. Although Ms. Lynch denied the Company access to her properties, thereby preventing a physical investigation of the lands to the north of the pond, it appears that no attempt was made to contact Ms. Hughes or Ms. Morrigan for the purposes of identifying the extent of the wetland or its ecological and hydrological functions. Notwithstanding this concern, the Board is of the view that sufficient evidence is before it to conclude that the mitigation measures outlined in the EPP for application when working in or near wetlands will adequately minimize adverse effects on the beaver pond area.

The Board is of the view that the mitigation measures outlined in M&NP's EPP will minimize the risk of contamination of water in the beaver pond due to accidental fuel and oil spills.

The Board is of the view that the evidence submitted by Mr. Ramsay regarding the proposed and alternate routes did not raise sufficient doubt that the proposed route was the best possible detailed route within the one km wide corridor.

In relation to the construction and operation of the pipeline, the Board notes M&NP's commitment to continue a dialogue with Ms. Lynch and the community with respect to the beaver pond.

With respect to the proposed route, the Board is satisfied that it meets all criteria set out in M&NP's detailed route selection process and that the potential effects on the land use and ecosystem values described by Ms. Lynch, Ms. Hughes and Ms. Morrigan may be effectively mitigated during construction and operation of the pipeline.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case.

The approval of the detailed route will be subject to the following conditions:

1) **Unless the Board otherwise directs, prior to construction, M&NP is directed to prepare and file with the Board a report on the soil and vegetative characteristics of the beaver pond and surrounding area on the Lynch and Hughes/Morrigan properties to determine whether a wetland, as described in the EIA, is present; and**

2) **Unless the Board otherwise directs, upon determination of the area as a wetland and prior to construction, M&NP is further directed to:**

i) **accurately delineate the wetland boundary and prepare and file with the Board a map indicating its current location in relation to the RoW prior to construction. The boundary of the wetland shall be accurately placed on the appropriate EPP map sheet; and**

ii) **prepare and file with the Board both a mitigation plan and monitoring plan for the wetland and provide copies to Ms. Lynch, Ms. Hughes and Ms. Morrigan.**

3.3.13 Lorne Wood

Description of Proposed Route (PPBoR Sheet 31)

The route proposed by M&NP would cross the property (PID 25098377) owned by Mr. Lorne Wood between KP 210.3 and 211.2. This property is located in the Lake Killarney area of Cumberland County, NS. The proposed route would approach Mr. Wood's property in a northerly direction and reach its southern boundary at KP 210.3. On the subject property, the proposed route would continue a northerly trajectory, following a straight line across the centre of the property, cross the John Smith Brook at KP 210.8 and exit the property at KP 211.1. The proposed route would travel through mainly agricultural lands on the property.

M&NP submitted that the proposed route would follow a direct route between control points in order to minimize disturbance and thus potential environmental impact. In this case, the alignment runs in a relatively straight line between the upstream control point at KP 206.7 where the route would cross the Dickson Road, and the downstream control point located at KP 211.5 where the alignment would avoid wet areas to the south and residences on the east side of Lake Killarney Road.

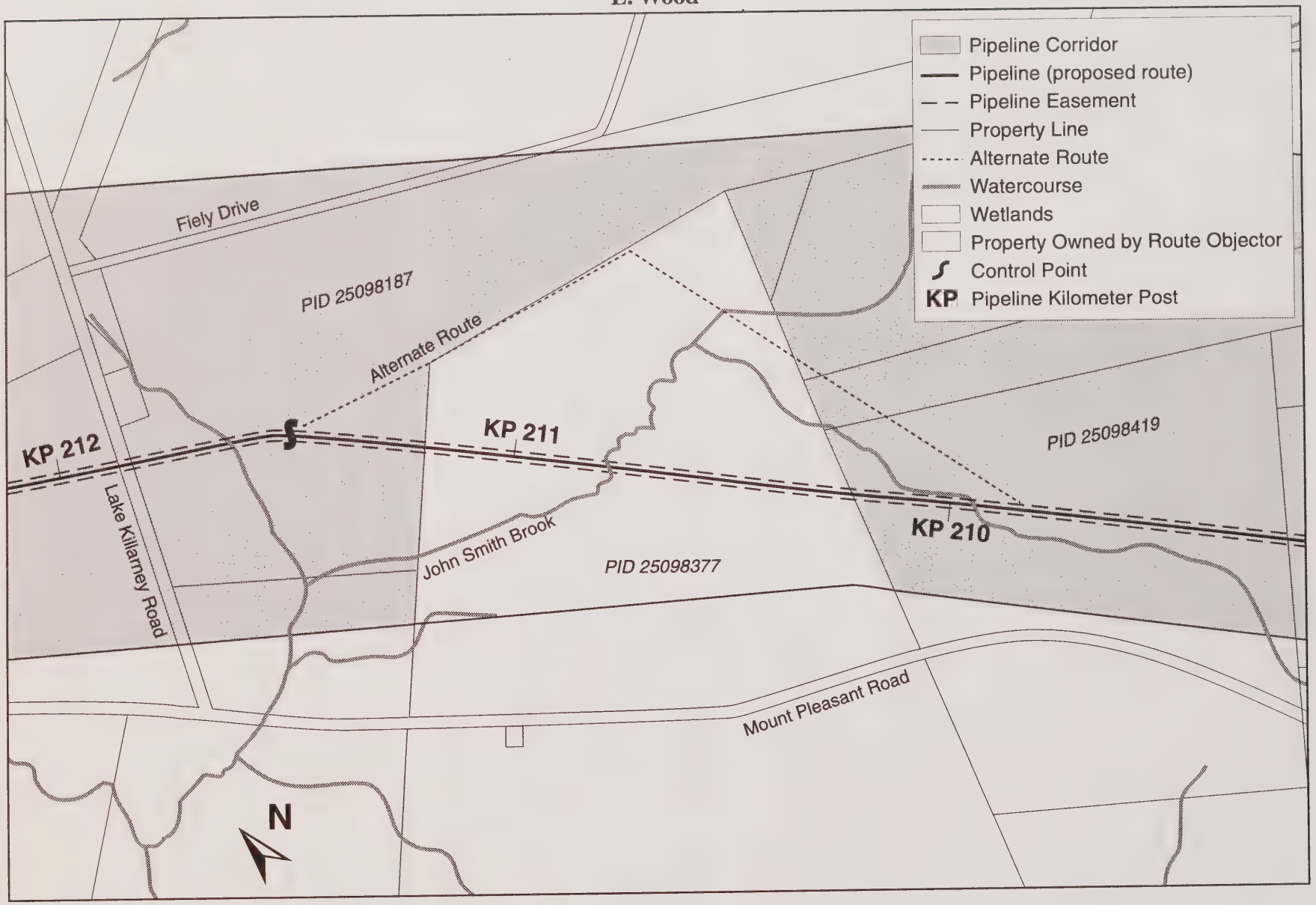
Nature of Objection

Mr. Wood objected to the proposed route on the basis that the pipeline cuts through the most fertile part of his farm and would adversely affect the productivity of his farmland.

Alternate Route

Mr. Wood suggested an alternate route which he contended would be far less disruptive and have less impact on the market value of his farm. The alternate route would diverge from M&NP's proposed route at KP 209.9, and proceed in a straight line north running parallel to a tributary of the John Smith Brook. It would enter Mr. Wood's property, cross the John Smith Brook and, at KP 210.9, would turn west to traverse along the northeast boundary of Mr. Wood's property where it would rejoin the proposed route at KP 211.5. The alternate route would be approximately 200 metres longer than M&NP's proposed route. It would have one less water crossing than the proposed route but would impact two currently unaffected properties.

Figure 3.3.13
L. Wood



Views of the Parties

Mr. Wood expressed the concern that the location of the proposed pipeline would negatively impact his farming operations and would devalue his property. Specifically, he was concerned with the potential effect on his crops, his ability to cross the easement with machinery and potential erosion due to spring flooding.

M&NP stated that it would implement mitigative measures to reduce the impacts on Mr. Wood's farming operation. Where crops could not be planted in the first and subsequent years, M&NP stated that compensation would be available. In regard to the flooding concerns, M&NP said that it would implement specific mitigative measures for flood plains.

In M&NP's experience, the existence of pipeline RoWs, especially on agricultural lands, has not had a negative effect on land values.

With respect to the alternate route, Mr. Wood indicated that it would go through higher and drier ground and would not be subject to the degree of flooding that occurs in the area of the proposed route. M&NP responded that flooding would also occur along the alternate route.

Views of the Board

The Board is of the view that the potential impacts of the pipeline construction and operation along the proposed route can be mitigated by the measures identified in M&NP's EPP and Letter of Commitments.

The Board recognizes Mr. Wood's concern with flooding along the proposed route in the area of the crossing of John Smith Brook and is of the view that the application of the mitigation measures as presented in the evidence, and committed to by M&NP's witnesses, would adequately address those concerns. The Board notes that flooding to some degree would also occur along the alternate route.

The Board notes the evidence of M&NP that the value of agricultural lands in other areas of the country has not been negatively impacted by the existence of a pipeline easement.

In the Board's view, the proposed route represents an appropriate balance of all relevant factors. The Board is satisfied, therefore, that the route proposed by M&NP is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

Chapter 4

Mineral Rights Objections

4.1 Objections by Holders of Mineral Exploration Licences

The Board received objections to M&NP's detailed route from two holders of Mineral Exploration Licences (the "Licences") issued by the Nova Scotia Department of Natural Resources (the "DNR"). The Board considered those objections in hearings held in Halifax, Nova Scotia on 10 and 11 August 1998.

4.2 General Board Comments with respect to Holders of Mineral Exploration Licences

A number of facts determined in these two hearings are common to both of the objections.

- M&NP did not consult with the holders of the Licences during the course of its detailed route selection process.

- The Licences, which give the holders the right to search and prospect for minerals and to apply for a mining lease within the areas described by the Licences, are valid and in good standing.

- A Licence, by its terms, was issued and is held subject to the rights of the owner, occupant or tenant of the land covered by the Licence and to the provisions of the relevant provincial laws.

- One of the important requirements applicable to the Licences is that, prior to carrying out any exploration activities, the holders must obtain permission for surface access from the DNR. By letter dated 7 August 1998, counsel for Sable Offshore Energy Inc. was advised by Rosalind C. Penfound, Executive Director, Land Services Branch of the DNR that the local DNR office for the Guysborough area had been advised "that surface access for mineral exploration on Crown land should not be given for any lands . . . in respect of which certificates have been issued by the National Energy Board . . " The 7 August letter did not explicitly describe the Licences affected by this direction; nor was there any reference to the proposed detailed route of the pipeline.

- No specific applications have been made for surface access by any of the affected Licence holders; and, accordingly, there was no evidence in these proceedings that either of those Licence holders has been denied surface access.

The provincial Crown has the authority to deny surface access to a Licence holder upon application, or to revoke the Licences, thereby effectively extinguishing the rights of the Licence holders to object to the detailed route of the pipeline. There was, however, no evidence that any of these actions had been taken by the DNR in respect of any of the Licences held by the objectors in these proceedings. In the Board's view, unless and until such definitive actions are taken, the interests of the Licence holders,

while dependent on and related to the provincial Crown (or mineral owner) and surface rights owners, form separate interests that, in the context of determining a detailed route under the Act, may not be adequately addressed through contact only with mineral and surface rights owners.

With respect to these objections, the Board is of the view that the failure to consult early in the planning process with holders of Licences puts into question the integrity of the proposed detailed route selection process. Specifically, the Board questions whether involvement of the Licence holders in the route selection process could have resulted in a different applied-for detailed route.

Be that as it may, the Board must now consider whether the respective detailed routes for which approvals are requested are the best possible detailed routes, having regard to all relevant factors, including the comparative merits of any proposed alternatives and the interests of the Licence holders.

4.3 Specific Mineral Rights Cases

The mineral rights holders' objections for which a hearing was held are summarized below and appear in the order they were heard by the Board.

4.3.1 Orex Exploration Inc.

Description of Proposed Route (PPBoR Sheet 1)

Orex holds Exploration Licence No. 00502 in the county of Guysborough, NS on land which spans the entire width of the approved corridor between KP 2.0 and KP 5.0.

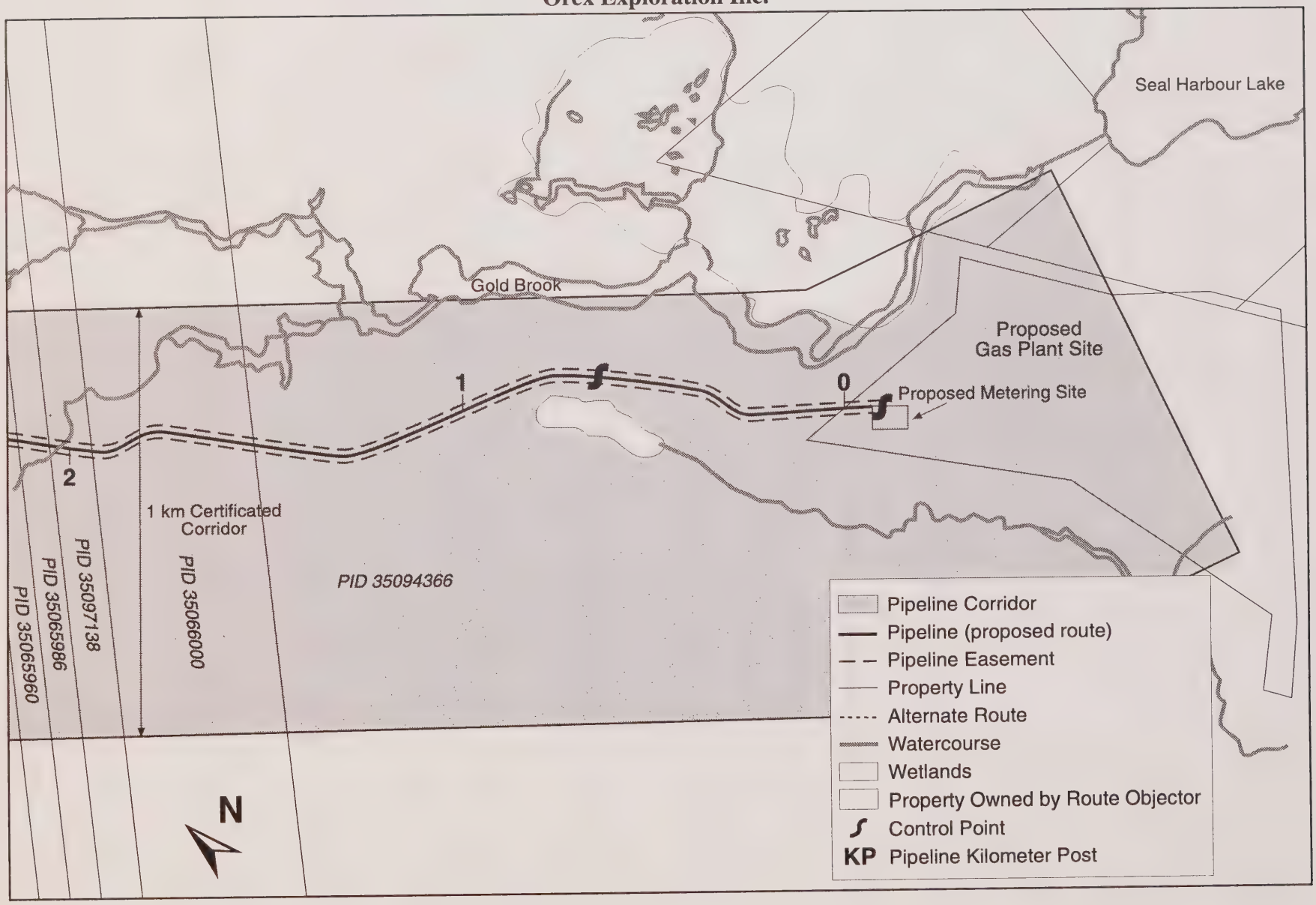
The proposed route would travel west to avoid a wet area near KP 2.0. After crossing an unnamed watercourse, the route would proceed towards the crossing of the Goldboro Branch Road. The route would then proceed in a northwesterly direction to a control point located at KP 4.1 between a provincially-mapped peat wetland and various abandoned drill sites and mine shafts.

M&NP submitted that the proposed route was determined based on M&NP's detailed route selection criteria. The criteria incorporated the primary principle of minimizing the overall length of the pipeline and a number of secondary principles. The proposed route would avoid wetland areas located at approximately KP 1.0 and KP 4.5, abandoned drill sites and mine shafts, mining areas, Gold Brook Lake (thereby minimizing interference with a Great Blue Heron colony) and Gold Brook. A control point occurs at KP 6.3, where the easements required for the construction of the natural gas pipeline and the NGLs pipeline would diverge.

Nature of Objection

Orex submitted that locating the pipeline anywhere along the corridor would prevent Orex from being able to undertake an open pit gold mining project.

Figure 4.3.1
Orex Exploration Inc.



Alternate Route

Orex submitted that the proposed pipeline could be rerouted around the Orex exploration boundary, to an area of land that is not cited for an open pit mine. Orex proposed three alternate routes for the pipeline. M&NP noted that each of the alternate routes would route the pipeline outside of the approved corridor. As such, M&NP indicated that a detailed routing assessment has not been conducted on those alternate routes.

Views of the Parties

Orex indicated that, for the last nine years, it has invested in the exploration and purchase of these lands with the intention of conducting open pit mining in the area. Through its exploration, Orex discovered a three km long corridor of gold mineralization. Orex submitted that the proposed pipeline route would run directly through the centre of this belt of gold mineralization. Orex also expressed a concern that the existence of a pipeline would impose a limitation upon its ability to develop an open pit mine or move heavy machinery across the pipeline.

M&NP submitted that it was not aware of Orex's future plans for the property until it consulted with Orex in July 1998. However, M&NP indicated that the interests of Orex had been taken into account when selecting the detailed route of the pipeline. M&NP indicated that the conduct of exploration activity on mineral claims was considered during the corridor selection process (although M&NP did not consult with Orex). Such activity constituted a Class 3 constraint, one that was avoided when possible by the route of the pipeline, and for which special construction practices were recommended. As such, M&NP submitted that areas of mineral exploration activity were avoided when possible. M&NP also indicated that the mineral claim portion of the Orex property was identified as a Class 3 constraint. However, the entire area has a mining licence or a mining claim on it and, as such, the Class 3 constraint was considered to be a neutral routing criteria because any route within the approved corridor would pass through the constraint.

M&NP indicated that the movement of heavy equipment across the pipeline would be possible and that it would work with Orex to ensure that there is no limitation imposed in this respect. M&NP committed to ensure that it would design and construct suitable crossings to carry equipment over the pipeline in order to assist Orex's operation, as required. M&NP further committed to work with Orex to try to find some way to allow the exploration and other related activities to take place.

Orex indicated that, if the Board approved the proposed pipeline route, it would require compensation because it is of the view that the construction and operation of the pipeline would affect the future work on and operation of its mineral rights.

Views of the Board

The Board notes that Orex's licence area extends across the entire corridor in this area and that the only alternative route that would satisfy Orex would be located outside the approved corridor. The Board is therefore of the view that, even if M&NP had consulted with Orex prior to determining the detailed route, the applied-for route would likely be no different.

The Board notes M&NP's commitment to work with Orex to mitigate the impacts of the pipeline on future exploration and mining activities that may occur in the vicinity of the easement.

The Board is of the view that all relevant criteria were applied and weighted in an appropriate manner. Therefore, the Board is satisfied that the route proposed by M&NP is the best possible detailed route.

Decision

The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

4.3.2 Heartland Resources Inc.

Description of Proposed Route (PPBoR Sheet 1)

The proposed detailed route of M&NP would begin at the meter station at the proposed Goldboro gas plant (KP 0.0) which is the first control point. The plant is approximately three km southeast of the village of Goldboro in Guysborough County, NS. From KP 0.0 to KP 0.7 the proposed route would traverse land which is subject to a mineral Exploration Licence held by Heartland. The land is owned by the Province of Nova Scotia.

The proposed route from KP 0.0 to about KP 1.0 was determined based on M&NP's detailed route selection criteria. The criteria considered the primary principle of minimizing the overall length of the pipeline and the secondary principles of avoiding constraints areas, wet areas, minimizing the number of properties traversed and minimizing the number of bends in the pipeline. The proposed route avoids Gold Brook which runs parallel and to the east of the proposed route from KP 0.0 to about KP 1.5. It also avoids a wetland area adjacent and to the west of the pipeline at about KP 0.7, a Great Blue Heron colony at Gold Brook Lake and mining activity in the area.

Nature of Objection

Heartland submitted that its ability to explore for minerals in the vicinity of the proposed route would be seriously restricted by the presence of the proposed pipeline and was concerned about the lack of consultation by M&NP in considering all interested parties.

Alternate Route

The alternate route proposed by Heartland would commence at KP 0.0, proceed in a westerly direction to the edge of the corridor, and would run to the northwest, parallel to the corridor boundary until exiting the Heartland exploration licence area. M&NP would then determine the pipeline route from this point, to where the proposed route would be rejoined.

Figure 4.3.2
Heartland Resources Inc.

Views of the Parties

Heartland indicated that it has held Exploration Licences in the area since 1981 and has actively explored for gold deposits since that time. Heartland stated that it had commissioned a consulting geologist and a mining engineer and both recommended that exploration be continued on the subject lands. It believes that the lands along the proposed route hold significant potential for the development of economic gold deposits and it has identified several exploration targets in the area.

Heartland stated that construction of the pipeline would affect its exploration plans if the construction occurred before September 1999. It stated that it would be able to complete its planned exploration activities over the alternate route by this date. Heartland stated that although it has held the Exploration Licence for this area for several years, market conditions and the availability of funds now favoured commencement of exploration.

M&NP argued that the proposed route reasonably considers active mining and exploration currently being conducted on the land. It stated that Heartland's exploration activities would not be precluded by the presence of the proposed pipeline.

M&NP prepared a comparison chart of the proposed versus alternate routes for the pipeline. The alternate would increase the length of the pipeline by about 600 metres, thereby increasing the surface disturbance and the cost of the pipeline. The alternate route would also require the crossing of Betty's Cove Brook which is located in an area where mine tailings are present. It was concerned that the crossing of the brook would release contaminants from the tailings. The proposed route, however, did not cross any brooks. M&NP further assessed factors such as archaeology, raptors, fish and fish habitat, rare odonates, acid rock drainage and mine workings. The factors were either not present or not a concern along the proposed route. The status of these factors for the alternate route was either not known or had high potential for being encountered. In light of the comparisons, M&NP did not consider the alternate route to be viable.

Heartland did not believe the additional length of the alternate route (i.e. 600 metres) to be significant and noted that the alternate would still be within the certificated corridor. It believed the alternate route would minimally impact its exploration activities because the alternate would cross areas that are either not promising for exploration or which have already been explored.

Heartland was also concerned about the lack of consultation by M&NP. Heartland indicated that it was not contacted during the route selection process and therefore was not given an opportunity to provide its input into the most appropriate detailed route for the pipeline.

Views of the Board

The Board notes that Heartland's licence area extends across the entire corridor in this area and therefore its interests may be affected no matter where the detailed route is located.

The Board is satisfied that the alternate route suggested by Heartland poses potentially serious problems which do not exist on the proposed route. These include increased surface disturbance, the crossing of Betty's Brook with the potential for the release of contaminants and the potential for abandoned mine shafts or old drilling sites.

Heartland's request for a delay in construction to allow it to carry out its exploration program is at this time an open-ended request for delay. Heartland does not presently have consent for surface access which would make the timing of any exploration program uncertain. In the Board's views, it would not be appropriate to require M&NP to delay construction as requested by Heartland.

The Board notes M&NP's commitment to work with Heartland to mitigate the impacts of the pipeline on future exploration and mining activities that may occur in the vicinity of the easement.

The Board is of the view that all relevant criteria were applied and weighted in an appropriate manner. Therefore, the Board is satisfied that the route proposed by M&NP is the best possible detailed route.

Decision

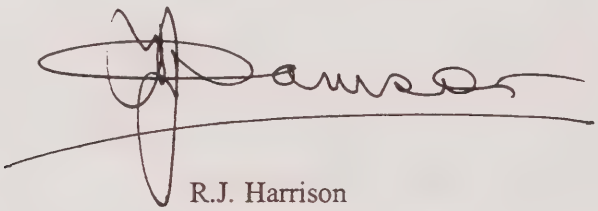
The Board finds that the detailed route proposed by M&NP is the best possible route for the pipeline in this case, and that M&NP has committed to the most appropriate methods and timing of construction.

Chapter 5

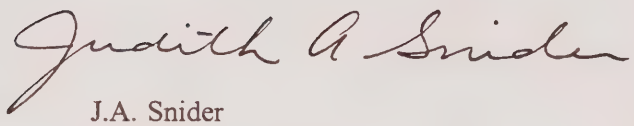
Disposition

The foregoing chapters constitute our Decisions and Reasons in the Board's MH-3-98 detailed route hearings.

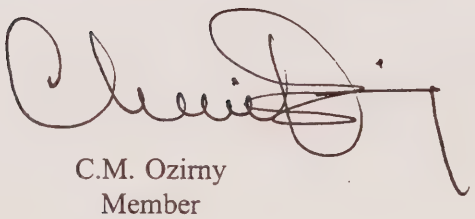
The Board's Decisions were unanimous with the exception of the objection filed by Mr. Piek, in which case Board Member C. M. Ozirny registered a dissenting opinion.



R.J. Harrison
Presiding Member



J.A. Snider
Member



C.M. Ozirny
Member

Calgary, Alberta
October 1998

Canada